

THIS FISHERIES AGREEMENT ON COMMERCIAL FISHERY

BETWEEN: Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans (hereinafter called "DFO");

OF THE FIRST PART

AND: Esgenoôpetitj First Nation, also known as Burnt Church First Nation (hereinafter called the "Band") as represented by its Chief and Council;

OF THE SECOND PART

WHEREAS DFO continues to be committed to providing access to fisheries resources for the Band;

AND WHEREAS the Parties remain committed to a relationship based on mutual respect and understanding;

AND WHEREAS the Parties acknowledge the importance of conservation and protection of the fisheries resources;

NOW THEREFORE the Parties agree as follows:

Purpose and Intention

- 1 (1) In light of the Supreme Court of Canada's decision in *R. v. Marshall* and other case law and considerations, the purpose of this Agreement is to continue the process established by DFO for providing increased access to fisheries resources by the Band.
- 1 (2) Under this Agreement, DFO shall provide the Band with access to fisheries and assistance in capacity building.

Definitions

2 In this Agreement,

"Advisory and Implementation Committee" means the Committee established pursuant to section 14 of this Agreement

"Agreement" means this fisheries agreement and the schedules attached hereto;

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"Band means the Esenoôpetitj First Nation, also known as Burnt Church First Nation, and band has the meaning given in subsection 2(1) of the Indian Act;

"capacity building" means funding contributions for the development of fishing capacity other than funding provided under the Fisheries Access Program;

"Commercial Fisheries Access" means the fishing described in Schedule A of this Agreement;

"Council of the Band" means Council of the Band as defined in subsection 2(1) of the Indian Act;

"Fisheries Access Program" means the retirement of existing commercial fishing licences and/or vessels and gear, including the construction or purchase of new vessels and gear;

"Year one (1)," means the fiscal year from April 1, 2002 to March 31, 2003;

"Year two (2)," means the fiscal year ~~from~~ April 1, 2003 to March 31, 2004;

"Minister" means the Minister of Fisheries and Oceans;

"RDG means the Regional Director General, Gulf Region, Department of Fisheries and Oceans.

#### Legal Interpretations

- 3 (1) This Agreement is intended, during the period it is in force and effect, to be binding upon the Parties in respect of the matters dealt with in this Agreement and is without prejudice to the positions of the Parties with respect to Aboriginal or treaty rights.
- 3 (2) For greater certainty, the Parties agree that this Agreement is not and shall not be interpreted to be an extinguishment of a treaty or Aboriginal right.
- 3 (3) This Agreement shall not serve to define Aboriginal or treaty rights, nor shall it be interpreted as evidence of the nature or extent of such rights. This Agreement is made without prejudice to the positions of the Parties with respect to Aboriginal or treaty rights, or to the positions of either Party in any future negotiations. For greater certainty, nothing in this Agreement precludes a party from taking positions in future negotiations which differ from the terms of this Agreement.
- 3 (4) This Agreement is not intended and shall not be construed or interpreted to be an agreement or a treaty within the meaning of section 35 of the Constitution Act, 1982.
- 3 (5) This Agreement is not intended to, and shall not be construed or interpreted to, affect any Aboriginal or treaty rights of any other Aboriginal group.

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### Fisheries Access

- 4 (1) DFO shall provide the Band with access to fisheries resources for the purpose of a commercial fishery through a communal fishing licence in respect of the species, stocks and quantities, and upon the terms and conditions specified in Schedule A.
- 4 (2) The Band agrees that during the term of this Agreement, commercial fisheries access for the Band is limited to the access described in Schedule A.

### Vessels, Gear and Capacity Building

- 5 (1) In an effort to assist the Band in capacity building in the fishery, DFO agrees to contribute multi-year funding, in accordance with Schedule B for:
- (a) the construction of 21 lobster vessels for a total contribution up to a maximum of \$3,150,000;
  - (b) the maximum amount referred to in s-s. 5(1)(a) will be reviewed expeditiously by the Implementation Committee for recommendation to DFO on any demonstrated need for possible extra funding for the construction of the vessels;
  - (c) for the provision of one mid-shore vessel up to a maximum value of \$1,000,000;
  - (d) upgrade of existing vessels, up to a maximum value of \$655,000;
  - (e) purchase or construction of up to 7,000 lobster traps; and
  - (f) for the provision of fishing gear related to the two (2) tuna licences.
- 5 (2) Any fishing vessels or gear provided under this Agreement are to be the property of the Band.
- 5 (3) The Band is responsible for any costs associated with maintenance, repair and replacement of fishing vessels, gear and other assets provided under this Agreement.

### Vessels and Multi-species Lobster Licences and Enterprises

- 6 In no event shall the total cost of the 21 multi-species lobster licences, fishing gear for lobster and tuna, enterprises and vessels exceed \$9,000,000. If the multi-species lobster licences be retired for less than \$9,000,000, the balance saved will be available to retire further licences.

### Other Negotiations

- 7 (1) It is the understanding of the Parties that the Minister of Fisheries and Oceans and the Minister of Indian and Northern Affairs Canada (INAC) will undertake separate negotiations outside of this Agreement with respect to economic development concerning the Tabusintac Resort.

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- 7(2) Further to the commitment made in the Agreement-in-Principle signed on August 1, 2002, the Minister of Fisheries and Oceans will secure \$75,000 ~~from~~ the Minister of Indian and Northern Affairs for the Band for a study to assess the feasibility of a resort on the Tabusintac River.
- 7(3) The funding agreement under subsection (2) will be subject to an agreement or agreements between the Minister of DFO and the Minister of INAC with respect to terms and conditions applicable to the project.

#### Designation

- 8 (1) The Band and the Advisory and Implementation Committee will be responsible for designating individuals in accordance with Schedule A to conduct fishing for the benefit of the Band.
- 8 (2) The Band and the Advisory and Implementation Committee will designate members of the Band to fish pursuant to the Commercial Licence.
- 8 (3) Pursuant to section 9 of this Agreement, the Band may designate any individual to assist in training its members in the fishery.
- 8 (4) Every individual designated to fish shall carry proof of designation.

#### Training

- 9 (1) Individuals who are not Band members and have been designated in writing by the Band pursuant to section 3 of Schedule A may assist the Band in training its members to carry out the fishing activities provided for in this Agreement.
- 9 (2) Unless otherwise provided in this Agreement, the Band assumes all responsibility for any costs and liabilities associated with the training described in subsection (1).
- 9 (3) The Band will strive to ensure that levels of training and proficiency acquired by its members are suitable for allowing competent and safe participation in the commercial fishery.

#### Ratification and Public Accountability

- 10 (1) The Band warrants that the Council of the Band discussed and approved the terms of this Agreement as evidenced by the Band Council Resolution dated September 12, 2002, a copy of which is annexed to this Agreement.
- 10 (2) The Band warrants that Chief Wilbur Dedam is authorized to execute this Agreement on behalf of the Council and the members of the Band, as set out in the Band Council Resolution annexed hereto.

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- 10 (3) The distribution of the fishing opportunities and other benefits outlined in this Agreement is the responsibility of the Band and the Advisory and Implementation Committee and the Band agrees to distribute the fishing opportunities and other benefits in a fair and open manner.
- 10 (4) (a) The Band shall provide a report on an annual basis to its members within 90 days following the end of each calendar year:
- (i) informing them of the financial and economic benefits gained pursuant to this Agreement; and
  - (ii) identifying to whom those benefits have accrued.
- (b) Within thirty days of the release of the report to its members, the Band will provide a copy to DFO.

Crown Representative

- 11 The Minister has authorised Pat Chamut, Assistant Deputy Minister, Fisheries Management, to execute this Agreement on behalf of Her Majesty the Queen in Right of Canada.

Schedules

- 12 Schedules A and B attached hereto form part of this Agreement.

Further Discussions, Amendment and/or Waivers

- 13 (1) DFO and the Band undertake to discuss from time to time at the request of either Party on any matters arising from or related to this Agreement, including amendments to this Agreement, and to work together in good faith to find a mutually acceptable solution to any issue that may arise.
- 13 (2) No amendment to this Agreement nor any waiver of any of its terms and conditions shall have any force or effect unless it is made in writing and signed by both Parties.

Implementation Committee

- 14 The Parties will establish an Implementation Committee to facilitate the implementation of this Agreement.

Debts Owning the Crown

- 15 The Band will declare to DFO if any amounts are owing to the federal government under any legislation or other contribution agreements.

Lobbyist Registration

- 16 The Band will ensure that any person lobbying on its behalf is registered pursuant to the *Lobbyist Registration Act*.

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Notice and Representatives

- 17 Where any written notice or other communication is required pursuant to this Agreement, it shall be delivered personally, by courier, registered mail or facsimile transmission, addressed to the Party as follows:

To: Regional Director General  
FISHERIES AND OCEANS CANADA  
Gulf Region  
343 University Avenue  
PO Box: PO Box 5030  
Moncton, New Brunswick E1C 9B6  
Telephone: (506) 851-7750

To: Esgenoôpetitj or Burnt Church First Nation  
620 Bayview Drive  
Burnt Church, NB, E9G 2A8  
Telephone: (506) 776-1244  
Fax: (506) 776-1254

- 18 A notice or other communication shall be deemed to have been received when the postal receipt is acknowledged by the other Party if sent by registered mail, and the following business day if sent by courier, facsimile transmission or delivered in person.

No Agency

- 19 Neither Party shall at any time represent itself as an agent of the other Party.

No Assignment

- 20 The Band shall not assign this Agreement or any part thereof.

House of Commons

- 21 No member of the House of Commons shall be admitted to any share or part of this Agreement, or to any benefit arising therefrom.

Conflict of Interest

- 22 A present or former public servant or public office holder who is not in compliance with the applicable provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders* or the *Conflict of Interest and Post-Employment Code for the Public Service* shall not derive a direct benefit from this Agreement.

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Good Faith

- 23** Subject to the authority of the Minister of Fisheries and Oceans, DFO and the Band shall work together in good faith to implement this Agreement.

Access to Information

- 24** Any information to be provided by or to DFO or shared by or with DFO pursuant to this Agreement shall be subject to federal legislation respecting access to information and privacy.

Indemnification

- 25 (1)** The Band shall indemnify and save harmless Her Majesty the Queen in Right of Canada, Her Ministers, officers, employees and agents ~~from~~ and against all claims, actions, causes of action, losses, damages, expenses and costs of whatsoever nature and kind arising out of or resulting directly or indirectly from any acts or omissions of the Band, its officers, members, employees, agents, contractors or anyone for whom the Band is responsible in law as a result of or in relation to this Agreement.
- 25 (2)** The obligations of the Band under subsection (1) shall survive termination or expiration of this Agreement.

Commencement and Duration

- 26 (1)** This Agreement shall come into effect on the date of signature of the Parties and, subject to section 26 shall terminate on March 31, 2004.
- 26 (2)** This Agreement supersedes and replaces all negotiations, arrangements, agreements, letters of intent or positions, whether oral or in writing, between the Parties hereto or their representatives with respect to all matters addressed in this Agreement.

Termination and Amendment

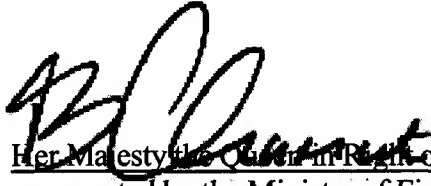
- 27 (1)** This Agreement, or any individual Schedule to the Agreement, may be terminated by either Party on six months' notice in writing to the other Party.
- 27 (2)** Notwithstanding subsection (1) and upon written notification to the Band, this Fisheries Agreement may be terminated if DFO determines that the objective of any contribution has not been met, or if the Band is in default of any of the provisions of this Agreement.
- 27 (3)** This Agreement may be amended with the consent of both parties in writing.

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IN WITNESS WHEREOF the Parties have executed this Agreement under the hands of their duly-  
authorised representatives this 13 day of ~~Sept~~, 2002.

Witness



Her Majesty the Queen in Right of Canada as  
represented by the Minister of Fisheries and Oceans  
by Pat Chamut, Assistant Deputy Minister, Fisheries  
Management, DFO, duly authorised to act on behalf  
of the Minister



Esgenoôpetitj First Nation, also known as  
Burnt Church First Nation, as represented by  
Chief Wilbur Dedam, duly authorised to act for the  
purposes of this Agreement on behalf of the Council  
and members of the Esgenoôpetitj First Nation, also  
known as Burnt Church First Nation

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Schedule A

Commercial Fisheries Access

Definitions

1 In this Schedule,

"Commercial Licence" means a communal fishing licence specified in section 2 of this Schedule;

"Commercial Designation Card" means a personal and non-transferable designation card issued in accordance with this Schedule;

"Schedule" means this Schedule including Appendix 1.

Licensing

2 (1) Pursuant to the *Fisheries Act*, DFO will issue to the Band the following communal fishing licences:

- |     |  |   |
|-----|--|---|
| (a) | Species of fish:   | multi-species lobster   |
|     | Number of licences:  | 21  |
|     | Area:  | LFA 23  |
|     | Gear type and quantity:  | as specified in conditions of licence   |
|     | Containing the Terms and Conditions of a commercial fishing licence for multi-species lobster. |   |
|     |  |   |
| (b) | Species of fish:   | snow crab   |
|     | Number of licences:  | the licence referred to in s. (f) of Appendix 1 of this Schedule  |
|     | Area:  | SCFA 12, 25 and 26  |
|     | Gear type:   | specified in conditions of licence  |
|     | Quantity:  | Prior to the snow crab season in 2003, an additional quota of snow crab will be allocated in snow crab area 12, 25 and 26, providing Burnt Church a total quota equivalent to the percentage that 300 metric tonnes would represent of the 2002 Total Allowable Catch for snow crab in area 12, 25 and 26. The 300 mt quota includes the 75 mt referred to in s. (f) of Appendix 1 of this Schedule. This quota will be for the 2003 season and will be expressed in the fisheries agreement as a percentage. |
|     | Containing the Terms and Conditions of a commercial fishing licence for snow crab.             |   |
|     |  |   |
| (c) | Species of fish:   | Bluefin tuna  |
|     | Number of licences:  | 2   |
|     | Area:  | NAFO FA 3, 4 and 5  |
|     | Gear type and quantity:  | as specified in conditions of licence   |

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Containing the Terms and Conditions of a  
commercial fishing licence for tuna.

- (d) Species of fish: bar clams  
Number of licences: 1  
Area: LFA 23  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a  
commercial fishing licence for bar clams.
- (e) Species of fish: clams  
Number of licences: 1  
Area: LFA 23 and 25  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a  
commercial fishing licence for clams.
- (f) Species of fish: eel  
Number of licences: 4  
Area: 1 in Miramichi Bay, 2 in Neguac  
Bay and 1 in Tabusintac River  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a  
commercial fishing licence for eel.
- (g) Species of fish: ground fish  
Number of licences: 4  
Area: 4RSTVn and 3Pn  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a  
commercial fishing licence for groundfish.
- (h) Species of fish: herring  
Number of licences: 3  
Area: 1 in HFA 16C&E and 2 in HFA 16B  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a  
commercial fishing licence for hemng.
- (i) Species of fish: hemng bait  
Number of licences: 5  
Area: HFA 16  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a  
commercial fishing licence for hemng bait.

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- (j) Species of fish: mackerel  
Number of licences: 11  
Area: MFA 16  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a commercial fishing licence for mackerel.
- (k) Species of fish: mackerel bait  
Number of licences: 20  
Area: MFA 16  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a commercial fishing licence for mackerel bait.
- (l) Species of fish: mussels  
Number of licences: 5  
Area: LFA 23 and 25  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a commercial fishing licence for mussels.
- (m) Species of fish: oysters  
Number of licences: 16  
Area: 1 in Miramichi Bay and 15 in Northumberland County  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a commercial fishing licence for oysters.
- (n) Species of fish: quahaug  
Number of licences: 1  
Area: LFA 23 and 25  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a commercial fishing licence for quahaug.
- (o) Species of fish: scallop  
Number of licences: 2  
Area: SFA 21  
Gear type and quantity: as specified in conditions of licence  
Containing the Terms and Conditions of a commercial fishing licence for scallop.
- (p) Species of fish: smelts  
Number of licences: 10  
Area: 3 in Miramich Bay, 2 in Neguac

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Gear type and quantity:  
Containing the Terms and Conditions of a  
commercial fishing licence for smelts.

Bay, 1 in Tabusintac Bay and 4 in  
Tabusintac River  
as specified in conditions of licence

(q) Species and quantities of fish as set out in the communal licences specified in Appendix 1 to this Schedule. Gear type and quantity of fish are subject to the usual terms and conditions of commercial fishing licences for those species specified in Appendix 1 to this Schedule. This Appendix reflects licences previously issued to the Band.

- 2 (2) It is understood by the Parties that actual implementation of the elements set out in subsection (1) will depend on availability of commercial access at reasonable costs, and upon the demonstrated capacity of the Band to fish the allocations.
- 2 (3) The Band will comply with the DFO Fisheries Management Plans for the commercial fisheries mentioned in subsection 2(1) and with the *Fisheries Act* and regulations made thereunder.

Designation Provisions to Fish under the Commercial Licence

- 3 (1) (a) The Parties agree that the Commercial Licences to be issued to the Band are intended to provide opportunities for Band members to conduct fishing and related activities.
- 3 (1)(b) The Band will ensure that Band members are on board vessels used for fishing under the Commercial Licences and that Band members will participate in fishing and related activities under those licences.
- 3 (1)(c) The Band will develop and implement a detailed plan to provide training and mentoring to Band members by specific fishery with the objective that all fishing and related activities under the Commercial Licences will be conducted by Band members within as short a period of time as possible.
- 3 (2) Each member designated to fish by the Band and the Advisory and Implementation Committee, shall be issued a Commercial Designation Card. The Commercial Designation Card shall be personal and non-transferable and will bear a unique card number and the name of the designated individual. The card will also specify where an individual has been designated to assist in training.
- 4 (1) Before fishing under the Commercial Licence, the Band shall:
- (a) provide to DFO a list of the names of all designated individuals, together with their Commercial Designation Card number and, where a vessel is to be used for fishing, the name and registration number of the vessel;

(q) inform each designated individual, of the provisions set out in this Schedule; and

(c) incorporate the terms and conditions of the Commercial Licence into the terms and conditions of the Commercial Designation Card provided to each designated individual.

4 (2) The Band and the Advisory and Implementation Committee may amend the list set out in subsection (1)(a) provided it sends the amended list to DFO before newly designated individuals commence fishing and before any newly designated vessel is used.

5 The Band shall inform each designated individual of any amendments to this Schedule and to the Commercial Licence.

6 Designated individuals will carry Commercial Designation Cards at all times while engaged in fishing or any other activity referred to in this Schedule, including the harvesting, transporting and landing of fish, and will present their Designation Card to a DFO fishery officer or a DFO fishery guardian, upon request.

#### Costs

7 Except for those costs identified in Schedule B, the Band is responsible for all costs associated with commercial fishing activities. For greater certainty and where applicable, such costs include dockside monitoring and observer coverage, as well as any requirements under any joint management plans that may be in place in the commercial fisheries to which the Band has access.

#### Coming into Force

8 This Schedule will come into force on the date of signature of this Agreement and, subject to section 26 of the Agreement, will terminate on March 31, 2004.

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Appendix 1 to Schedule A

The following lists the communal fishing licences referred to in clause 2(1)(q) of this Schedule:

- (a) Species of fish: lobster  
Number of licences: 13  
Area: LFA 23  
Gear type and quantity: as specified in conditions of licence  
Containing the usual Terms and Conditions of a commercial fishing licence for lobster.
  
- (b) Species of fish: hemng  
Number of licences: 9  
Area: 7 in HFA 16C&E and 2 in HFA 16B  
Gear type and quantity: as specified in conditions of licence  
Containing the usual Terms and Conditions of a commercial fishing licence for herring.
  
- (c) Species of fish: herring bait  
Number of licences: 17  
Area: HFA 16  
Gear type and quantity: as specified in conditions of licence  
Containing the usual Terms and Conditions of a commercial fishing licence for herring bait.
  
- (d) Species of fish: mackerel  
Number of licences: 7  
Area: MFA 16  
Gear type and quantity: as specified in conditions of licence  
Containing the usual Terms and Conditions of a commercial fishing licence for mackerel.
  
- (e) Species of fish: rock crab  
Number of licences: 2  
Area: LFA 23  
Gear type and quantity: as specified in conditions of licence  
Containing the usual Terms and Conditions of a commercial fishing licence for rock crab.
  
- (f) Species of fish: snow crab  
Number of licences: 1  
Area: SCFA 12, 25, and 26  
Gear type and quantity: gear as specified in conditions of licence, quantity - 75 mt  
Containing the usual Terms and Conditions of a commercial fishing licence for snow crab.

## Schedule B

### Contributions

#### Definitions

1 In this Schedule:

"Allowable Costs" means the costs and expenses approved by DFO that are incurred by and are paid or payable by the Band during a fiscal year in carrying out the project and that are described in Appendix 1 of this Schedule, but does not include the Harmonized Sales Tax (HST) paid on the costs and expenses for which the Band may claim reimbursement or exemption.

"contribution 1" means funding provided by DFO in accordance with section 2 of this Schedule;

"contribution 2" means funding provided by DFO in accordance with section 3 of this Schedule;

"contribution 3" means funding provided by DFO in accordance with section 4 of this Schedule;

"contribution 4" means funding provided by DFO in accordance with section 5 of this Schedule;

"contribution 5" means funding provided by DFO in accordance with section 6 of this Schedule;

"contributions" means the total of contributions 1, 2, 3, 4, and 5;

"fiscal year" means the period commencing April 1 and terminating March 31 of the following year, inclusively;

"project" means the activities described in this Schedule;

"Schedule" means this Schedule including Appendices 1, 2, 3, 4 and 5.

### Contributions

#### Contribution 1

- 2 (1) Subject to appropriations by Parliament, DFO shall pay to the Band a contribution not exceeding \$3,150,000 for the construction of 21 lobster vessels with associated equipment suitable for fishing lobster in Lobster Fishing Area 23. The Band accepts this contribution as constituting part of the Commercial Fisheries Access.

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- 2 (2)** Before DFO pays the monies provided for in subsection 2(1) and in the manner prescribed in subsection 2(7), the Band shall provide DFO, for its approval, with a copy of the contracts for the construction of the vessels and satisfactory proof that the proposed costs do not exceed their market value.
- 2 (3)** It is the sole responsibility of the Band:
- (a) to obtain independent technical, legal and other advice in relation to the construction of the vessels;
  - (b) to ensure, upon receipt, that the vessels meet the needs of the Band and are in good seaworthy condition and repair;
  - (c) to ensure that the vessels are free and clear of all liens, financial obligations and other charges;
  - (d) to obtain independent technical, legal and other advice in order to complete the necessary certification and registration to the Band for the vessels, without delay; and
  - (e) to effect and maintain whatever insurance on the vessels that the Band considers necessary.
- 2 (4)** The Band shall notify the Implementation Committee concerning its choice of legal counsel to oversee and finalize the contract for the construction of the vessels.
- 2 (5)** In consultation and upon recommendation of the Implementation Committee, the legal counsel referred to in subsection 2(4) shall disburse the funds received in trust on behalf of the Band for the construction of the vessels, subject to the following conditions:
- (a) monies for the construction of the vessels will be advanced to the Band in accordance with the payment schedule set out in the building contract; and
  - (b) any amount provided by DFO in excess of the finds under clause (a) shall be returned to DFO forthwith.
- 2 (6)** Monies relating to any incomplete transaction referred to in section 2 of this Schedule shall be returned to DFO without delay.
- 2 (7)** It is the sole responsibility of the Band to conduct its own inspection or evaluation of the vessels. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to the vessels.
- 2 (8)** At any time prior to the awarding of the building contract, and during construction, DFO reserves the right to conduct its own independent evaluation of the construction of the vessels.
- 2 (9)** When the Band takes delivery of each of the vessels, it shall immediately notify DFO, in writing, of the date and place of delivery, and provide DFO with a copy of a report as to the condition of each of the vessels at the time of delivery.



- 2 (10) Within thirty days following receipt of the vessels, the Band shall provide DFO with confirmation of the certification and registration referred to in clause 2(3)(d) for each of the vessels.

### Contribution 2

- 3 (1) DFO agrees to facilitate the provision to the Band of the following vessels (hereinafter called "the Property"):
- (a) one midshore vessel complete with gear and traps suitable for fishing snow crab.
- 3 (2) The Band acknowledges that it has inspected and would like to acquire the Property.
- 3 (3) DFO reserves the right to conduct its own independent evaluation of the Property.
- 3 (4) DFO will use its best efforts to facilitate the transfer of the Property to the Band.
- 3 (5) The Band agrees to accept the transfer of the Property, in the condition that it is and at the place where it is at the time of the transfer.
- 3 (6) DFO has no obligations to the Band with respect to the transfer of the Property or the failure of the Property to be transferred.
- 3 (7) It is the sole responsibility of the Band:
- (a) to ensure that the Property meets its needs, is in good seaworthy condition and repair and contains no hazardous substances within the meaning of the Canada Labour Code;
  - (b) to ensure that the Property is free and clear of all liens, financial obligations and other charges;
  - (c) to obtain, complete and register, without delay, any required bill of sale, Carving and Marking Note, Certificate of Registry, and any other document needed to transfer ownership of the Property;
  - (d) to effect and maintain whatever insurance on the Property that it considers necessary;
  - (e) to obtain independent technical, legal and other advice in relation to the transfer of the Property;
  - (f) to pay for all costs associated with the transfer of the Property, including but not limited to all costs of registering the Property, making the Property seaworthy, upgrading the Property, maintaining and equipping the Property, having the Property inspected, obtaining the necessary certificates, removing the Property from the place where it is located at the date of transfer, and operating the Property;
- 3 (8) The Band is responsible for any damage, loss or charges arising out of the transfer of the Property, including but not limited to the transfer of the Property to the Band, the removal of the Property ~~from~~ the place where it is located at the date of transfer, and ownership and operation of the Property.

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- 3 (9) When the Band takes delivery of the Property, it shall immediately notify DFO, in writing, of the date and place of delivery, and provide DFO with a copy of the surveyor's report as to the condition of the Property at the time of delivery.

### Contribution 3

- 4 (1) Subject to appropriations by Parliament, DFO shall provide funding in Year one (1) to the Band for upgrading or replacement of up to 17 existing Band vessels, to a maximum of 655,000.
- 4 (2) Before DFO pays the monies provided for in subsection (1), the Band shall provide DFO satisfactory proof that the proposed purchase prices for upgrades do not exceed their fair market value.
- 4 (3) Within thirty days of the date of the initial payment by DFO, the Band will provide to DFO a copy of the formalized contracts referred to in subsection (2), in default of which the payments shall be returned to DFO. DFO, at its discretion, may grant an extension with respect to the thirty-day time period.
- 4 (4) The Band shall conduct its own inspection or evaluation of the vessels upgrade. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to the vessels upgrade.
- 4 (5) DFO reserves the right to conduct its own independent evaluation of the vessels upgrade.

### Contribution 4

- 5 DFO will provide funding to the Band for the construction or purchase of up to 7,000 lobster traps for fishing in Lobster Fishing Area 23 (hereinafter called "the traps").
- 6 In the event that the Band chooses to construct its own traps, it will remain the sole responsibility of the Band to:
- (a) to ensure that the traps meets its needs, is in good condition and repair;
  - (b) to effect and maintain whatever insurance on the traps that it considers necessary; and
  - (c) to pay for all costs associated with maintaining the traps.
- 7 In the event that the Band wishes to purchase the lobster traps, the Band will provide DFO copies of the contracts for purchase before any monies are paid out. The Band will also have sole responsibility to:
- (a) to ensure that the traps meets its needs, is in good condition and repair;
  - (b) to effect and maintain whatever insurance on the traps that it considers necessary; and
  - (c) to pay for all costs associated with maintaining the traps.

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## Contribution 5

- 8 (1) DFO will facilitate the provision of fishing gear suitable for fishing the two (2) tuna licences, mentioned in s. 2(1)(c) of Schedule A of this agreement. The tuna fishing gear shall hereinafter be called "the gear".
- 8(2) The Band acknowledges that it has inspected and would like to acquire the gear.
- 8 (3) DFO reserves the right to conduct its own independent evaluation of the gear.
- 8 (4) DFO will use its best efforts to facilitate the transfer of the gear to the Band.
- 8 (5) The Band agrees to accept the transfer of the gear, in the condition that it is and at the place where it is at the time of the transfer.
- 8 (6) DFO has no obligations to the Band with respect to the transfer of the gear or the failure of the gear to be transferred.
- 8 (7) It is the sole responsibility of the Band:
  - (a) to ensure that the gear meets its needs, is in good condition and repair;
  - (b) to ensure that the gear is free and clear of all liens, financial obligations and other charges;
  - (c) to effect and maintain whatever insurance on the gear that it considers necessary; and
  - (d) to pay for all costs associated with maintaining the gear and, having the gear inspected.

### Authorizations required by law

- 9 (1) The Band will ensure that any authorizations required pursuant to subsection 35(2) of the *Fisheries Act* and any other authorizations required by law are obtained prior to the commencement of any habitat, enhancement or other activities, under this Agreement, and that those activities are conducted in accordance with those authorizations.
- 9(2) The Band will immediately provide DFO, for its approval, the details on any changes or alterations to the project. Any change or alteration by the Band to a project must be consistent with the description set out in this Schedule.
- 9 (3) DFO shall fulfil its responsibilities under the *Canadian Environmental Assessment Act* ("CEAA") before any advances or payments can be made in relation to:
  - (a) any part of a project to which a CEAA assessment relates; and
  - (b) any change or alteration to the project that would require a further CEAA assessment.

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### Contribution and Role

- 10 (1) DFO will contribute to the First Nation up to FOUR MILLION AND EIGHT HUNDRED AND FIVE THOUSAND DOLLARS (\$4,805,000) during the course of this agreement to be used exclusively for paying Allowable Costs. Any interest earned by the First Nation on the Contribution or any part thereof shall also be used exclusively for paying Allowable Costs.
- 10 (2) In carrying out the Project, the First Nation will:
- (a) act as recipient and administrator of the Contribution; and
  - (b) carry out all its obligations and comply with all the terms and conditions set out in this Agreement.

### Debts Owning the Crown

- 11 The First Nation must declare if any amounts are owing to the federal government under any legislation or other contribution agreements. Such amounts owing to the government may be set off against payments due to the First Nation under this Agreement.

### Lobbyist Registration

- 12 The First Nation will ensure that any person lobbying on their behalf is registered pursuant to the Lobbyist Registration Act.

### Requirements Prior to Payments

- 13 (1) The First Nation will provide to the Implementation Committee by the 15<sup>th</sup> of each month:
- (a) a projection of Allowable Costs to be paid under this Agreement in the form determined by the Implementation Committee; and
  - (b) a projected summary of results from the Project.
- 13 (2) DFO may require the First Nation to provide to the Implementation Committee a more detailed description of the Project in a form acceptable to DFO.

### Method of Payment and Repro filing

#### **Monthly Payments**

- 14 (1) Upon the signing of this agreement and the submission by the First Nation of a cash flow statement, DFO shall deliver to the First Nation a payment covering the projected costs of this agreement up to the end of September, 2002.

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- 14 (2) For every other payment after the monthly cash flow projections referred to in paragraph 13(1)(a), DFO will review for approval the recommendation of the Implementation Committee and upon approval, will deliver payment to the First Nation by the beginning of the next month.
- 14 (3) Where a statement of Balance referred to in paragraphs 16(d)(iv) or 18(3)(d) or subsection 18(4) indicates that the total of the payments paid to the First Nation pursuant to this Agreement exceed Allowable Costs paid or payable by the First Nation during the period covered by the statement of Balance, DFO shall deduct the Balance from any payment or payments to be made by DFO to the First Nation pursuant to subsection (2) or section 17.

### **Reprofiling**

- 15 (4) The Implementation Committee may recommend to DFO the reprofiling of unused funds within the same project.
- 15 (5) Upon the recommendation of the Implementation Committee and approval by DFO, unused funds may also be reprofiled to other projects within this agreement or other BCFN/DFO agreements.

### **Final Report**

- 16 The Band shall produce a final report within seventy-five (75) days of the following
- (a) the First Nation incurring Allowable Costs in an amount equal to or exceeding the maximum amount of the Contribution; or
  - (b) completion of the Project; or
  - (c) termination of this Agreement; or
  - (d) abandonment of the Project by the First Nation, whichever first occurs, the First Nation will complete and submit a final report containing:
    - (i) a progress report on the Project itemized in relation to each of the activities of the project;
    - (ii) a report on Allowable Costs paid or payable, itemized in relation to each of the activities of the Project;
    - (iii) a report on Allowable Costs paid or payable, itemized in relation to each type of Allowable Cost set out in Appendix 1 to this Agreement;
    - (iv) a statement of Balance in the form as set out in Appendix 4 to this Agreement;
  - (e) an audit, if required in this Agreement.

### **Final Payment**

- 17 Subject to subsection 18(1) of this Agreement, following receipt and approval of the final report referred to in section 7, DFO will pay to the First Nation the amount, if any, by

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which the First Nation's total Allowable Costs as reported in the final report exceed all payments, and reimbursements made by DFO under this Agreement.

#### Holdback and Overpayments

- 18 (1) In no event will the total of all advance payments made by DFO pursuant to this Agreement exceed FOUR MILLION, THREE HUNDRED AND TWENTY-FOUR THOUSAND AND FIVE HUNDRED DOLLARS (\$4,324,500).
- 18 (2) All payments made pursuant to this Agreement are subject to the Implementation Committee recommending approval to DFO of the First Nation's projected costs and actual expenditures as set out in the reports and claims for payment of Allowable Costs submitted pursuant to subsection 14(1) and section 16.
- 18 (3) Where the First Nation fails to provide to the Implementation Committee:
- (a) a report referred to in section 16;
  - (b) a detailed description of the Project in accordance with subsection 14(2);
  - (c) the cash flow projection referred to in paragraph 14(1)(a); or,
  - (d) the statement of Balance referred to in subsection (4)

in a form acceptable to the Implementation Committee, or by the date the report or information is due, payments may be withheld until receipt and approval of the relevant document or information by the Implementation Committee.

- 18 (4) The Implementation Committee may, in its discretion, require the First Nation to provide a statement of Balance in the form as set out in Appendix 4 to this Agreement at any time.
- 18 (5) Where the First Nation provides a final report referred to in section 7 but the report does not, in the Implementation Committee's opinion, contain the information required for the report, DFO may withhold any payment to be made by DFO to the First Nation pending receipt by the Implementation Committee of the information required.

#### Audit

- 19 The First Nation shall, on request, allow DFO, or any person designated by DFO, to audit, make copies of or take extracts from and examine the books, accounts, records, supporting documentation and any other document referred to in subsection 24(1) as DFO considers justified. The First Nation shall provide all the necessary assistance for these audits and examinations.

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### Other Contributions and Assistance

- 20 (1) The First Nation declares that it has not received or will not be receiving financial assistance from other sources with respect to all contributions under this Agreement, including any subsequent amendments.
- 20 (2) The First Nation agrees to inform DFO promptly in writing of any additional financial assistance to be received with respect to this Agreement other than that referred to in this Agreement.
- 20 (3) Where appropriate, DFO shall have the right to reduce its contribution by any equivalent amount of additional assistance referred to in this section that is to be received by the First Nation, or to require reimbursement from the First Nation should total government assistance exceed the total amount of this Agreement.
- 21 The contributions and any interest earned by the First Nation shall be used exclusively to pay the Allowable Costs.

### Refund Provisions

- 22 Within seventy-five (75) days following:

- (a) completion of the project, or
- (b) termination of this Schedule or the Agreement, or
- (c) the end of a fiscal year, or
- (d) abandonment of the project, or any part thereof, by the Band

whichever occurs first, the Band shall repay to DFO any amount of the contribution(s) and any interest earned by the Band not disbursed for the payment of Allowable Costs.

- 23 The Band's obligations under sections 16 and 22 of this Schedule remain in force after the termination of this Schedule and the Agreement.

### General Provisions

- 24 (1) The First Nation shall:

- (a) keep books, accounts, records and supporting documentation with respect to all financial transactions related to the Contribution in accordance with Canadian generally accepted accounting principles;
- (b) preserve the books, accounts, records and supporting documentation mentioned in paragraph (a) together with reports and any other documents related to the Project for a period of two years following termination of this Agreement; and

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- (c) on demand, provide to DFO any of the documentation mentioned in paragraph (a) for examination and audit by any person that DFO may from time to time designate.

24 (2) Within fifteen (15) days following:

- (a) the First Nation having incurred Allowable Costs in an amount equal to or exceeding the full amount of the Contribution;
- (b) completion of the Project described in Appendix 2 to this Agreement;
- (c) termination of this Agreement; or
- (d) abandonment of the Project by the First Nation;

whichever occurs first, the First Nation shall repay to DFO any amount of the Contribution and interest earned therein not disbursed for Allowable Costs.

24 (3) The First Nation shall refund to DFO, forthwith on written request by DFO, any moneys advanced to the First Nation for which unsatisfactory evidence has been furnished by the First Nation that the moneys have been expended in accordance with this Agreement.

24 (4) Any amount that the First Nation is under an obligation to refund or reimburse under subsection (2) or (3) shall be a debt owing to Her Majesty the Queen in right of Canada.

24 (5) In no event will DFO make any payments other than the payment referred to in section 17 following receipt of the final report referred to in section 16.

24 (6) Where any claim for payment, payment information or other communication or report related to payment, notice, request, information or other communication is required to be given pursuant to this Agreement, it shall be in writing and delivered personally, by courier, registered mail or facsimile transmission, and unless notice to the contrary is given, shall be addressed to the Party at the address or number set out below:

To: Regional Director General  
FISHERIES AND OCEANS CANADA  
Gulf Region  
343 University Avenue  
PO Box: PO Box 5030  
Moncton, New Brunswick E1C 9B6  
Telephone: (506) 851-7750

To: Esogenoôpetitj or Burnt Church First Nation  
620 Bayview Drive  
Burnt Church, NB, E9G 2A8  
Telephone: (506) 776-1244  
Fax: (506) 776-1254

24 (7) A notice, request, direction, information or other communication shall be deemed to have been received when the postal receipt is acknowledged by the other Party if sent by

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registered mail and the following business day if sent by courier, facsimile transmission or delivered in person.

- 24 (8) A Party may change its representative, address or telephone or facsimile number by giving a notice of change to the other Party in accordance with subsection (6).
- 24 (9) The obligations of the First Nation under section 20 and subsections (1) to (4) shall survive the termination of this Agreement.
- 24 (10) Any information to be provided by or to DFO or shared by or with DFO pursuant to this Agreement shall be subject to the Access to Information Act, R.S.C. 1985, c. A-1, and the Privacy Act, R.S.C. 1985, c. P-21, as amended from time to time.
- 24 (11) DFO and the First Nation shall consult from time to time at the request of each other on all matters arising out of this Agreement and will work together to attempt to find a mutually acceptable solution to any issue that may arise out of this Agreement.

#### Coming into Force

- 25 This Schedule will come into force on the date of signature of this Agreement and, subject to section 26 of the Agreement, will terminate on March 31, 2004.

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Appendix 1 to Schedule B

Description of Allowable Costs

Allowable costs may include reasonable and properly itemized costs for:

A. Administration including

- i) salaries and benefits
- ii) other labour costs
- iii) supplies and materials
- iv) overhead
- v) consultant fees

B. Operations including

- i) salaries and benefits
- ii) establishing and maintaining offices
- iii) supplies and materials
- iv) meeting expenses
- v) consultant fees
- vi) constructing, establishing and maintaining offices and other facilities
- vii) equipment purchase, lease or rental
- viii) land transactions and buildings
- ix) training fees and expenses including materials
- x) purchase or construction of a vessel and gear

C. Travel and related expenses

D. Costs of any audits requested by DFO

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Appendix 2 to Schedule B

Contribution Project Report

Fiscal Year: \_\_\_\_\_

Name of First Nation: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Amount of Approved Contribution: \_\_\_\_\_

Funds Received to date: \_\_\_\_\_

---

Detail of Work or activities completed to date;

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Approved Contribution	Year to Date Expenditures	Commitments	Forecast to Year end	Total Forecast for Project

Type of Expenditures	Funds received last Period	Expenditures last Period	Amount required for next Period
	XXXXXX		
Salaries		XXXXXX	
Consultant fees		XXXXXX	
Supplies and Materials		XXXXXX	

\_\_\_\_\_  
{Signing Authority)

\_\_\_\_\_  
Date

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Appendix 3 to Schedule B

Cash flow projection

For the \_\_\_\_\_ Fiscal Year

MONTH	\$
April	
May	
June	
July	
August	
September	
October	
November	
December	
January	
February	
March	
TOTAL	

NOTE: The Band should include only the Allowable Costs that it will incur in the future and leave empty the spaces for the previous months.

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Appendix 4 to Schedule B  
Statement of Balance

For the period from \_\_\_\_\_, 2002  
to \_\_\_\_\_, 2002

Allowable Costs paid or payable \$

MINUS

Contributions from DFO  
received to date

\$

BALANCE

\$

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**Burnt Church First Nation**  
620 Bayview Drive, Burnt Church, NB, E9G 2A8  
Phone (506) 776-1200 Fax (506) 776-1215

**BAND COUNCIL RESOLUTION**

---

Pursuant to the consent of a majority of the Council of the Burnt Church First Nation Special Meeting of the Council of the Burnt Church First Nation held on the 12<sup>th</sup> day of September, 2002 for the specific purpose of reviewing, discussing, and approving a Fisheries Agreement with Her Majesty the Queen in the Right of Canada. THE COUNCIL OF THE BURNT CHURCH FIRST NATION RESOLVES AS FOLLOWS:

1. BE IT RESOLVED THAT the Council of the Burnt Church First Nation hereby approves the terms of the draft Fisheries Agreement dated September 12, 2002.
2. BE IT FURTHER RESOLVED THAT the Council of the Burnt Church First Nation authorizes Chief Wilbur Dedam to execute the Fisheries Agreement on behalf of the Council and all members of the Burnt Church First Nation.

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Chief Wilbur Dedam

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Councillor

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Councillor

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Councillor

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Councillor

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Councillor

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Councillor

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Councillor

A quorum of the Burnt Church Band Council consists of seven (7) Council Members.

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THIS FISHERIES AGREEMENT AMENDMENT No. 1 ON COMMERCIAL FISHERY  
MADE

BETWEEN: Her Majesty the Queen in Right of Canada as represented by the  
Minister of Fisheries and Oceans (hereinafter called "DFO");

OF THE FIRST PART

AND: Esgenoôpetitj First Nation, also known as Burnt Church First  
Nation (hereinafter called the "Band") as represented by its Chief  
and Council

OF THE SECOND PART

WHEREAS on or about the 23<sup>rd</sup> day of September, 2002, the Parties entered into a Fisheries  
Agreement on Commercial Fishery, hereinafter called the "Agreement";

AND WHEREAS the Parties have continued negotiations with respect to the Agreement;

AND WHEREAS pursuant to section 27(3) of the said Agreement, the Parties wish to  
amend the terms of the said Agreement to reflect the results of those further negotiations;

NOW THEREFORE the Parties agree as follows;

1. The Parties amend the terms of the Agreement by replacing s. 5(1) with the  
following:
  - 5 (1) In an effort to assist the Band in capacity building in the fishery, DFO  
agrees to contribute multi-year funding, in accordance with Schedule B  
for:
    - (a) the construction of 21 lobster vessels, vessel transportation fees, legal  
fees and professional services, for a total contribution up to a  
maximum of \$3,940,000, more particularly described in Appendix 5 of  
Schedule B;
    - (b) for the construction of one mid-shore vessel, more particularly  
described in section 3(1) of Schedule B;
    - (c) upgrade of existing vessels, up to a maximum value of \$655,000;
    - (d) training in the construction of and the construction of or purchase of  
up to 6,300 lobster traps, up to a maximum value of \$490,000; and
    - (e) for the provision of fishing gear related to the two (2) tuna licences.
2. The Parties amend the terms of the Agreement by replacing s. 6 with the  
following:

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- 6(a) In no event shall the total cost of the 21 multi-species lobster licences, as set out in Schedule A, and the fishing gear for lobster and tuna, enterprises and the corresponding 21 vessels, as set out in Schedule B, exceed \$9,000,000.
- 6(b) Notwithstanding paragraph (a), DFO agrees to cover all reasonable costs associated with the construction of the 21 new lobster vessels referred to in s. 5(1)(a), and more particularly described in Appendix 5 of Schedule **B**, and the construction or purchase of the 6,300 new lobster traps referred to in 5(1)(d) should the total cost of the 21 multi-species lobster licences, fishing gear for lobster and tuna, enterprises and the corresponding 21 vessels exceed \$9,000,000.
3. The Parties amend the terms of the Agreement by replacing s. 2(1) of Schedule B with the following:

Contribution 1

- 2 (1) Subject to appropriations by Parliament, DFO shall pay to the Band a contribution not exceeding \$3,940,000 for the construction of 21 lobster vessels with associated equipment suitable for fishing lobster in Lobster Fishing Area 23, vessel transportation fees, legal fees and professional services, more particularly described in Appendix 5. The Band accepts this contribution as constituting part of the Commercial Fisheries Access.
4. The Parties amend the terms of the Agreement by replacing s. 2(2) of Schedule B with the following:
- 2 (2) Before DFO pays the monies provided for in subsection (1) and in the manner prescribed in subsection (5), the Band shall provide DFO, for its approval , with a copy of the contracts for the construction of the vessels and satisfactory proof that the proposed costs do not exceed their market value.
5. The Parties amend the terms of the Agreement by replacing s. 2(5) of Schedule B with the following:
- 2 (5) In consultation and upon recommendation of the Implementation Committee, the legal counsel referred to in subsection 2(4) shall disburse the funds received in trust on behalf of the Band for the construction of the vessels, subject to the following conditions:
- (a) monies for the construction of the vessels will be advanced to the builder/contractor in accordance with the payment schedule set out in the building contracts;
  - (b) the Band will provide copies of reports of the progress of the construction of the vessels to DFO in support of the release of payments; and

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- (c) any amount provided by DFO in excess of the funds under paragraph (a) shall be returned to DFO forthwith.

- 6. The Parties amend the terms of the Agreement by replacing s. 3 of Schedule B with the following:

Contribution 2

- 3 (1) Subject to appropriations by Parliament, DFO shall provide funding to the Band for the construction of one mid-shore vessel complete with gear and traps suitable for fishing snow crab in SCFA 12, 25 and 26, at a fair market value and not to exceed \$1,000,000. The Band accepts this contribution as constituting part of the Commercial Fisheries Access.
- 3 (2) Before DFO pays the monies provided for in subsection (1) and in the manner prescribed in subsection (5), the Band shall provide DFO, for its approval, with a copy of the contracts for the construction of the vessels and satisfactory proof that the proposed costs do not exceed their market value.
- 3 (3) It is the sole responsibility of the Band:
  - (a) to obtain independent technical, legal and other advice in relation to the construction of the vessel;
  - (b) to ensure, upon receipt, that the vessel meet the needs of the Band and are in good seaworthy condition and repair;
  - (c) to ensure that the vessel is free and clear of all liens, financial obligations and other charges;
  - (d) to obtain independent technical, legal and other advice in order to complete the necessary certification and registration to the Band for the vessel, without delay; and
  - (e) to effect and maintain whatever insurance on the vessel that the Band considers necessary.
- 3 (4) The Band shall notify the Implementation Committee concerning its choice of legal counsel to oversee and finalize the contract for the construction of the vessel.
- 3 (5) In consultation and upon recommendation of the Implementation Committee, the legal counsel referred to in subsection (4) shall disburse the funds received in trust on behalf of the Band for the construction of the vessel, subject to the following conditions:
  - (a) monies for the construction of the vessel will be advanced to the builder/contractor in accordance with the payment schedule set out in the building contract;

- (b) the Band will provide copies of reports of the progress of the construction of the vessel to DFO in support of the release of payments; and
    - (c) any amount provided by DFO in excess of the funds under paragraph (a) shall be returned to DFO forthwith.
  - 3 (6) Monies relating to any incomplete transaction referred to in this section of this Schedule shall be returned to DFO without delay.
  - 3 (7) It is the sole responsibility of the Band to conduct its own inspection or evaluation of the vessel. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to the vessels.
  - 3 (8) At any time prior to the awarding of the building contract, and during construction, DFO reserves the right to conduct its own independent evaluation of the construction of the vessel.
  - 3 (9) When the Band takes delivery of the vessel, it shall immediately notify DFO, in writing, of the date and place of delivery, and provide DFO with a copy of a report as to the condition of the vessel at the time of delivery.
  - 3 (10) Within thirty days following receipt of the vessels, the Band shall provide DFO with confirmation of the certification and registration referred to in paragraph (3)(d) for each of the vessel.
7. The Parties amend the terms of the Agreement by replacing s. 4 of Schedule B with the following:

Contribution 3

- 4 (1) Subject to appropriations by Parliament, DFO shall provide funding in Year one (1) to the Band for upgrading or replacement of up to 13 existing Band vessels, up to a maximum of \$655,000.
- 4 (2) Before DFO pays the monies provided for in subsection (1), the Band shall provide DFO satisfactory proof that the proposed purchase prices for upgrades do not exceed their fair market value.
- 4(3)
  - a) Prior to the commencement of work on the vessels, the Band will provide documentation to DFO detailing the work to be performed on each vessel; and
  - b) At the end of each month, upon completion of work on any of the vessels, the Band will provide DFO with invoices detailing the work completed and a statement signed by a Band representative that the work was completed to the complete satisfaction of the Band.

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- 4(4) When the terms of (3)(a) and (3)(b) are met, the Band authorizes DFO to directly pay on its behalf Dugas Equipment of Caraquet, New Brunswick, for the upgrades to the vessels referred to in section (1), upon completion of the said upgrades.
- 4 (5) The Band shall conduct its own inspection or evaluation of the vessels upgrade. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to the vessels upgrade.
- 4 (6) DFO reserves the right to conduct its own independent evaluation of the vessels upgrade.
8. The Parties amend the terms of the Agreement by replacing s. 5 of Schedule B with the following:

Contribution 4

- 5 DFO will provide funding to the Band up to a maximum of \$490,000 for up to a total of 6,300 lobster traps for fishing in Lobster Fishing Area 23 (hereinafter collectively called "the traps"). The funding will be used for:
- (a) the construction of traps and training in the construction of traps of up to 9 members of the Band for up to 18 weeks; or
  - (b) the purchase of traps.
9. The Parties amend the terms of the Agreement by replacing s. 6 of Schedule B with the following:
- 6(1) In the event that the Band wishes to receive training in the construction of traps and constructs some or all of the traps, the Band will enter into a contract with Dane Technologies, subject to section 5. The Band will ensure that the contract with Dane Technologies includes provisions that require Dane Technologies to provide the equipment and material required to construct those traps, and provisions for the training of the Band members.
- 6 (2) It will remain the sole responsibility of the Band:
- (a) to ensure that the traps meet its needs and are in good condition and repair;
  - (b) to effect and maintain whatever insurance on the traps that it considers necessary;
  - (c) to pay for all costs associated with maintaining the traps; and
  - (d) ensure that the training provided by Dane Technologies meets the needs of the Band.

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- 6(4) The Band will provide to the Implementation Committee copies of the proposed contract with Dane Technologies, for its approval and to ensure that the proposed costs do not exceed their fair market value.
10. The Parties amend the terms of the Agreement by replacing s. 7 of Schedule B with the following:
- 7 In the event that the Band wishes to purchase some or all of the traps, the Band will provide DFO copies of the contracts for purchase before any monies are paid out. The Band will also have sole responsibility:
- (a) to ensure that the traps meets its needs and are in good condition and repair;
  - (b) to effect and maintain whatever insurance on the traps that it considers necessary; and
  - (c) to pay for all costs associated with maintaining the traps.
11. The Parties amend the terms of the Agreement by replacing s. 10(1) of Schedule B with the following:
- 10 (1) DFO will contribute to the Band up to SIX MILLION AND EIGHTY-FIVE THOUSAND DOLLARS (\$6,085,000) during the course of this agreement to be used exclusively for paying Allowable Costs. Any interest earned by the Band on the Contribution or any part thereof shall also be used exclusively for paying Allowable Costs.
12. The Parties amend the terms of the Agreement by replacing s. 18(1) of Schedule B with the following:
- 18 (1) In no event will the total of advances for contributions made to the Band under subsection 4(1) by DFO pursuant to section 14(2) of Schedule B of this Agreement exceed FOUR HUNDRED AND FORTY-ONE THOUSAND DOLLARS (\$441,000).
13. The Parties amend the terms of the Agreement by adding s. (1.1) to s. 18 of Schedule B, which reads as follows:
- 18(1.1) In no event will the total of all advances and payments made by DFO pursuant to this Schedule exceed SIX MILLION AND EIGHTY-FIVE THOUSAND DOLLARS (\$6,085,000).
14. The Parties amend the terms of the Agreement by replacing s. 18(2) of Schedule B with the following:
- 18 (2) All payments made pursuant to this Agreement are subject to the Implementation Committee recommending approval to DFO of the Band's

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projected costs and actual expenditures as set out in the reports and claims for payment of Allowable Costs submitted pursuant to subsection 6(4), subsection 14(1) and section 16.

15. The Parties amend the terms of the Agreement by replacing s. 18(3) of Schedule B with the following:

18 (3) Where the Band fails to provide to the Implementation Committee:

- (a) a report referred to in section 16;
- (b) a detailed description of the Project in accordance with subsection 14(2);
- (c) the cash flow projection referred to in paragraph 14(1)(a); or,
- (d) the statement of Balance referred to in subsection (4);
- (e) the proposed contract with Dane Technologies

in a form acceptable to the Implementation Committee, or by the date the report or information is due, payments may be withheld until receipt and approval of the relevant document or information by the Implementation Committee.

16. The Parties amend the terms of the Agreement by adding Appendix 5 to Schedule B, which reads as follows:

Appendix 5 to Schedule B

*Contribution 1 – Subsection 2(1)*

**A) Vessel Construction**

Name of Builder	Costs per vessel	No. of vessels	Total Costs
1. Magna Marine	\$138,100.00	7	\$966,700.00
2. Guimond Boats	\$145,390.00	1	\$145,390.00
3. Central Marine Fiber	\$117,500.00	3	\$352,500.00
4. Trenholm's Fiberglass	\$145,642.86	3	\$432,928.58
5. Samson Enterprises	\$115,995.00	7	\$811,965.00
<b>TOTAL</b>		21	\$2,709,483.58

**B) Engines Acquisition**

Name of Distributor	Costs per engine	No. of engines	Total Costs
1. Industrial Engines	\$42,000.00	19	\$798,000.00
2. Simon Auto & Marine	\$40,000.00	2	\$ 80,000.00
<b>TOTAL</b>		21	<b>\$878,000.00</b>

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COPY *CA* 7

**C) Electronics for Vessels**

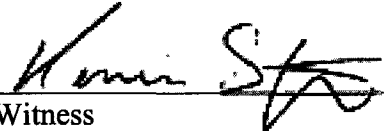
**\$175,000.00**


**D) Other Costs (Consulting fees, legal fees, administration costs, inspections, evaluations and transportation of the vessels referred to in s. 2(1) and s. 3(1) of Schedule B)**

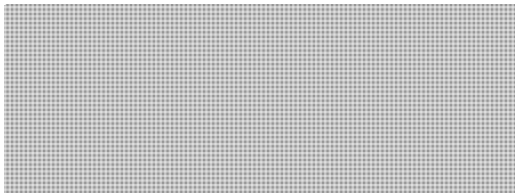
**\$177,516.42**


17. The Fisheries Agreement on Commercial Fishery as amended by this Amending Agreement shall continue in full force and effect for the remainder of the term thereof.

IN WITNESS WHEREOF the Parties have executed this Amending Agreement under the hands of their duly-authorized representatives this 28 day of December, 2002.

  
Witness

  
Her Majesty the Queen in Right of Canada  
as represented by the Minister of Fisheries  
and Oceans, DFO, by Pat Chamut, Assistant  
Deputy Minister, Fisheries Management



  
Esgenoôpetitj First Nation, as represented by  
its Chief, Chief Wilbur Dedam, duly  
authorized to act for the purposes of this  
Agreement on behalf of the Council and  
members of the Esgenoôpetitj First Nation

**CERTIFIED  
COPY** *NA* <sup>8</sup>

THIS FISHERIES AGREEMENT AMENDMENT No. 2 ON COMMERCIAL FISHERY  
MADE

BETWEEN: Her Majesty the Queen in Right of **Canada** as represented by the  
Minister of Fisheries and Oceans (hereinafter called "DFO");

OF THE FIRST PART

AND: **Esgenoôpetitj** First Nation, also **known** as Burnt Church First  
Nation (hereinafter called the "Band") as represented by its Chief  
and Council

OF THE SECOND PART

**WHEREAS** on or about the **23<sup>rd</sup>** day of September, 2002, the **Parties** entered into a Fisheries  
Agreement on Commercial Fishery, amended on November **28<sup>th</sup>**, 2002, hereinafter called  
the "Agreement";

AND WHEREAS the Parties **have** continued negotiations **with** respect to the Agreement;

AND WHEREAS pursuant to section 27(3) of the said Agreement, the Parties wish to  
**amend** the terms of the said **Agreement** to reflect the results of those further negotiations;

**NOW** THEREFORE the **Parties** agree **as** follows;

1. The Parties amend the **terms** of the Agreement by deleting s. 7 of the Agreement.

2. The Parties amend the **terms of the** Agreement by replacing s. 4(4) of Schedule B  
**with** the following:

4(4) Subject to paragraphs (3)(a) and (3)(b) and the recommendation of the  
Implementation **Committee** and approval of DFO, the Band authorizes DFO  
to **pay** directly on **its** behalf the contractors specified in Appendix 5 for **the**  
upgrades to the vessels referred to in subsection (1).

3. The Parties amend the terms of the Agreement by replacing s. 18(1) of Schedule  
B **with** the following:

18 (1) In no event will the total of **advances for** contributions made to the Band  
under subsection 4(1) and section 5 by DFO **pursuant** to section 14(2) of  
Schedule B of this **Agreement** exceed **ONE MILLION THIRTY**  
**THOUSAND AND FINE HUNDRED DOLLARS (\$1,030,500).**

4. The Parties amend the terms of the Agreement by replacing Appendix 5 to Schedule B, with the following:

Appendix 5 to Schedule B

*Contribution 1 – Subsection 2(1)*

A) Vessel Coastruction

Name of Builder	Costs per vessel	No. of vessels	Total Costs
1. <b>Magna Marine</b>	\$138,100.00	7	\$966,700.00
2. <b>Guimond Boats</b>	\$145, 390.00	1	\$145, 390.00
3. <b>Central Marine Fiber</b>	\$117,500.00	3	\$352,500.00
4. <b>Trenholm's Fiberglass</b>	\$145,642.86	3	\$432,928.58
5. <b>Samson Enterprises</b>	<b>\$115,995.00</b>	7	\$811,965.00
<b>TOTAL</b>		<b>21</b>	<b>\$2,709,483.58</b>

B) Engines Acquisition

Name of Distributor	Costs per engine	No. of engines	Total Costs
1. <b>Industrial Engines</b>	\$42,000.00	19	\$798,000.00
2. <b>Simon Auto &amp; Marine</b>	\$40,000.00	2	\$ 80,000.00
<b>TOTAL</b>		<b>21</b>	<b>\$878,000.00</b>

C) Electronics for Vessels

\$175,000.00

D) Other Costs (Consulting fees, legal fees, administration costs, inspections, evaluations and transportation of the vessels referred to in s. 2(1) and s. 3(1) of Schedule B)

**\$177,516.42**

*Contribution 3 – Subsection 4(4)*

Repair of Trophy vessel:	\$ 5,000
Purchase of 4 used vessels:	\$203,533
Connctor: Dugas Equipment –Repairs and Engines:	\$236,467
Contractor: Industrial Engines and <b>Fishing</b> Supplies Ltd.:	<b>\$ 210,000</b>
Total	\$655,000



s.19(1)

5. The Fisheries Agreement on Commercial Fishery as amended by this Amending Agreement ~~shall~~ continue in ~~full~~ force and effect for the remainder of the term thereof.

IN WITNESS WHEREOF the Parties have executed this Amending Agreement under the hands of their duly-authorized representatives this 20<sup>th</sup> day of Feb., 2003 BA

Witness

Robert Allain  
Her Majesty the Queen in Right of Canada  
as represented by the Minister of Fisheries  
and Oceans, DFO, by Robert Allain,  
Regional Director, Gulf Region, Fisheries  
Management

Chief Wilbur Dedam  
Esgenoôpetitj First Nation, as represented by  
its Chief, Chief Wilbur Dedam, duly  
authorized to act for the purposes of this  
Agreement on behalf of the Council and  
members of the Esgenoôpetitj First Nation

THIS INTERIM FISHERIES AGREEMENT

BETWEEN: Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans (hereinafter called "DFO");

OF THE FIRST PART

AND : Eskasoni Indian Band, as represented by Chief Allison Bernard (hereinafter called the "Band");

OF THE SECOND PART

WHEREAS DFO is committed to providing interim access to fisheries resources for the Band;

AND WHEREAS the Parties are committed to a relationship based on mutual respect and understanding and accept that this Agreement is the initial stage of a longer term process;

AND WHEREAS the Parties acknowledge the importance of conservation and protection of the fisheries resources;

NOW THEREFORE the Parties agree as follows:

Purpose

- 1 (1) In light of the Supreme Court of Canada's decision in *R. v. Marshall* and other case law and considerations, the purpose of this Agreement is to facilitate access to fisheries resources by the Band as an interim measure, pending further discussions on other, longer term harvesting arrangements.
- 1 (2) Under this Agreement, DFO shall provide the Band with access to fisheries and assistance in capacity building.

Definitions

- 2 (1) In this Agreement,  
  
"Agreement" means this interim fisheries agreement and the schedules attached hereto;  
  
"Band" means the Eskasoni Indian Band, and band has the meaning given in subsection 2(1) of the *Indian Act*;  
  
"Capacity Building" means those activities described in Schedule B of this Agreement;  
  
"Commercial Fisheries Access" means the fishing described in Schedule A;

"Council of the Band" means Council of the Band as defined in subsection 2(1) of the *Indian Act*;

"Minister" means the Minister of Fisheries and Oceans;

"RDG" means the Regional Director General, Maritimes Region, Department of Fisheries and Oceans.

#### Legal Interpretations

- 3 (1) This Agreement is intended, during the period it is in force and effect, to be binding upon the Parties in respect of the matters dealt with in this Agreement, and is without prejudice to the positions of the Parties with respect to Aboriginal or treaty rights.
- 3 (2) This Agreement shall not serve to define Aboriginal or treaty rights, nor shall it be interpreted as evidence of the nature or extent of such rights. This Agreement is made without prejudice to the positions of the Parties with respect to Aboriginal or treaty rights, or to the positions of either Party in any future negotiations.
- 3 (3) This Agreement is not intended and shall not be construed or interpreted to be an agreement or a treaty within the meaning of section 35 of the *Constitution Act, 1982*.
- 3 (4) This Agreement is not intended to, and shall not be construed or interpreted to, affect any Aboriginal or treaty rights of any other Aboriginal group.

#### Commencement and Duration

- 4 (1) Subject to Paragraph 11, this Agreement shall come into effect on the date of signature of the Parties, and shall terminate on March 31, 2001.
- 4 (2) This Agreement supersedes and replaces all negotiations, arrangements, agreements, letters of intent and/or positions, whether oral or in writing, between the Parties hereto or their representatives with respect to all matters addressed in this Agreement.
- 4 (3) Sub-paragraph 4(2) does not apply to the Aboriginal Fisheries Strategy Agreement between the Parties executed on the same date as this Agreement.

#### Fisheries Access

- 5 (1) DFO shall provide the Band with access to fisheries resources for the purpose of a commercial fishery through a communal fishing licence in respect of the species, stocks and quantities, and upon the terms and conditions specified in Schedule A.
- 5 (2) The Band agrees that during the term of this Agreement, fisheries access for the Band is limited to the access described in Schedule A.

### Capacity Building

- 6 (1)** In an effort to assist the Band in capacity building in the fishery, DFO agrees to contribute funding, in accordance with Schedule B:
- (a) to complete the construction of a vessel, as set out in Appendix 2 to Schedule B;
  - (b) for the construction of a bait house, as set out in Appendix 3 to Schedule B;
  - (c) for a feasibility study, business plan and construction of a lab and training facility, as set out in Appendix 3 to Schedule B;
  - (d) for three boats and a floating dock, as set out in Appendix 3 to Schedule B;
  - (e) for safety equipment and fishing equipment upgrades, as set out in Appendix 3 to Schedule B;
  - (f) to facilitate the provision of oyster gear, training, equipment, spat production and business plans, as set out in Appendix 4 to Schedule B;
  - (g) for navigational and Master IV fishing training, as set out in Appendix 4 to Schedule B;
  - (h) for co-management projects, as set out in Appendix 4 to Schedule B;
  - (i) for equipment and training in the gaspereau fishery, as set out in Appendix 4 to Schedule B;
  - (j) for an Environmental Master Plan, as set out in Appendix 4 to Schedule B; and,
  - (k) for developing a Fisheries Strategy, as set out in Appendix 4 to Schedule B.
- 6 (2)** Individuals who are not Band members and have been designated in writing by the Band pursuant to section 3 of Schedule A may assist the Band in training its members to carry out the fishing activities provided for in this Agreement.
- 6 (3)** The Band assumes all responsibility for any costs and liabilities associated with the training described in sub-paragraph 6(2).

### Designation of Fishers and Distribution of Benefits

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- 7** The Band is responsible for designating individuals in accordance with Schedule A to conduct fishing for the benefit of the Band.

### Ratification and Public Accountability

- 8 (1)** The Band warrants that the Council of the Band discussed and approved the terms of this Agreement as evidenced by the Band Council Resolution dated JUNE 13, 2000, a copy of which is annexed to this Agreement.
- 8 (2)** The Band warrants that Chief Allison Bernard is authorized to execute this Agreement on behalf of the Council and the members of the Band, as set out in the Band Council Resolution annexed hereto.

8 (3) The Minister has authorized James Alexander MacKenzie, Chief Federal Representative, to execute this Agreement on behalf of Her Majesty the Queen in Right of Canada.

8 (4) The Council of the Band shall inform its members of the contents of this Agreement and shall provide an annual report to its members outlining the financial and economic benefits. On request, the Council will provide a copy of this report to DFO.

#### Schedules

9 Schedules A and B attached hereto form part of this Agreement.

#### Further Discussions

10 DFO and the Band undertake to discuss from time to time at the request of either Party matters arising from or related to this Agreement, including amendments to this Agreement and to work together in good faith to find a mutually acceptable solution to any issue that may arise.

#### Termination

11 This Agreement, or any individual Schedule to the Agreement, may be terminated by either Party on six (6) months' notice in writing to the other Party.

#### Notice and Representatives

12 (1) Where any written notice or other communication is required pursuant to this Agreement, it shall be delivered personally, by courier, registered mail or facsimile transmission, addressed to the Party as follows:

DFO:	Maritimes Region
Address:	176 Portland Street, P.O. Box 1035, Dartmouth, NS B2Y 4T3
Attention:	Regional Director General
Telephone:	902-426-2581
Facsimile:	902-426-3470

Band:	Eskasoni Indian Band
Address:	R.R. 2, East Bay, NS BOA 1H0
Attention:	Chief and Council
Telephone:	902-379-2800
Facsimile:	902-379-2172

12 (2) A notice or other communication shall be deemed to have been received when the postal receipt is acknowledged by the other Party if sent by registered mail, and the following business day if sent by courier, facsimile transmission or delivered in person.

#### Amendment or Waiver

- 13 No amendment to this Agreement nor any waiver of any of its terms and conditions shall have any force or effect unless it is made in writing and signed by both Parties.

#### No Agency

- 14 Neither Party shall at any time represent itself as an agent of the other Party.

#### No Assignment

- 15 The Band shall not assign this Agreement or any part thereof.

#### House of Commons

- 16 No member of the House of Commons shall be admitted to any share or part of this Agreement, or to any benefit arising therefrom.


#### Public Servants


- 17 A present or former public servant or public office holder who is not in compliance with the applicable provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders* or the *Conflict of Interest and Post-Employment Code for the Public Service* shall not derive a direct benefit from this Agreement.

#### General


- 18 Subject to the authority of the Minister of Fisheries and Oceans, DFO and the Band shall work together in good faith to implement this Agreement.
- 19 Any information to be provided by or to DFO or shared by or with DFO pursuant to this Agreement shall be subject to access to information and privacy legislation.
- 20 The Band shall indemnify and save harmless Her Majesty the Queen in Right of Canada, Her Ministers, officers, employees and agents from and against all claims, actions, causes of action, losses, damages, expenses and costs of whatsoever nature and kind arising out of or resulting directly or indirectly from any acts or omissions of the Band, its officers, members, employees, agents, contractors or anyone for whom the Band is responsible in law as a result of or in relation to this Agreement.
- 21 The obligations of Band under Paragraph 20 shall survive termination or expiration of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement under the hands of their duly-authorized representatives this 13 day of && ,2000.

  
Witness

  
Hopedajoniy the Golden Eagle Fish of Canada Oceans  
represented by the Minister of Fisheries an  
by James Alexander MacKenzie, Chief Federal  
Representative, duly authorized to act on behalf of the  
Minister



  
Eskasoni Band, as represented by its Chief, Allison  
Bernard, duly authorized to act for the purposes of  
this Agreement on behalf of the Council and  
members of the Eskasoni Band

## Schedule A

### Commercial Fisheries Access

#### Definitions

1 In this Schedule,

"Commercial Licence" means a communal fishing licence specified in section 2 of this Schedule;

"Commercial Designation Card" means a personal and non-transferable designation card issued in accordance with this Schedule;

"Schedule" means this Schedule.

#### Licensing

- 2 (1) Pursuant to the *Fisheries Act*, DFO will issue Commercial Licences to the Band that reflect the commitment made by DFO in subsection 3(1) of Schedule B.
- 2 (2) The gear type and quantity of fish set out in the Commercial Licence are subject to the usual terms and conditions of commercial fishing licences for those species.
- 2 (3) The Band will comply with the DFO Fisheries Management Plans for the commercial fisheries mentioned in subsection 2(1) and with the *Fisheries Act* and regulations made thereunder.

#### Designation to Fish under the Band's Commercial Licence

- 3 (1) The Band will designate members of the Band to fish pursuant to the Commercial Licence. Pursuant to Paragraph 6 of this Agreement, where training is involved, the Band may designate one individual per vessel who is not a member of the Band to assist in training its members in the fishery. Each individual designated by the Band shall be issued a Commercial Designation Card. Each card shall be personal and non-transferable and will bear a unique card number and the name of the designated individual. The card will specify where an individual has been designated to assist in training.
- 3 (2) Before fishing under the Commercial Licence, the Band shall:
  - (a) provide to DFO a list of the names of all designated individuals, together with their Commercial Designation Card number and, where a vessel is to be used for fishing, the name and registration number of the vessel;
  - (b) inform each designated individual of the provisions set out in this Schedule; and
  - (c) incorporate the terms and conditions of the Commercial Licence into the terms and conditions of the Commercial Designation Card provided to each designated individual.



- 1
- 3 (3) ~~The~~ Band may amend the list set out in subsection 3(2) provided it sends the amended list to DFO before newly designated individuals commence fishing and before any newly designated vessel is used.
- 3 (4) The Band shall inform each designated individual of any amendments to this Schedule and to the Commercial Licence.
- 3 (5) Designated individuals will carry their Commercial Designation Cards at all times while engaged in fishing or any other activity referred to in this Schedule, including the harvesting, transporting and landing of fish, and will present their Commercial Designation Card to a DFO fishery officer or a DFO fishery guardian or Aboriginal Fisheries Guardian, upon request.

#### Costs

- 4 Except for those costs identified in Schedule B, the Band is responsible for all costs associated with commercial fishing activities. For greater certainty and where applicable, such costs include dockside monitoring and observer coverage, as well as any requirements under any joint management plans that may be in place in the commercial fisheries to which the Band has access.

#### Coming into Force

- 5 This Schedule will come into force on the date of signature of this Agreement and, subject to Paragraph 11 of the Agreement, will terminate on March 31, 2001.

## Schedule B

### Capacity Building

#### Definitions

1. In this Schedule:

"Allowable Costs" means the costs and expenses approved by DFO that are incurred by and are paid or payable by the Band during the fiscal year in carrying out the project and that are described in Appendix 1 of this Schedule, but does not include the Harmonized Sales Tax (HST) paid on the costs and expenses for which the Band may claim reimbursement or exemption.

"Contribution 1" means funding provided by DFO in accordance with section 2 of this Schedule;

"Contribution 2" means funding provided by DFO in accordance with section 3 of this Schedule;

"Contribution 3" means funding provided by DFO in accordance with section 4 of this Schedule;

"Contribution 4" means funding provided by DFO in accordance with section 5 of this Schedule;

"Contributions" means the total of contribution 1 and contribution 2 and contribution 3 and contribution 4;

"Fiscal Year" means the period April 1, 2000 to March 31, 2001 inclusive;

"Project" means the activities described in Appendices 1, 3 and 4 of this Schedule;

"Schedule" means this Schedule including Appendices 1, 2, 3, 4, 5, and 6.

#### Contributions

##### **Contribution 1: Construction of Multi-Purpose Fishing Vessel**

- 2 (1) During the fiscal year DFO shall pay to the Band a contribution not exceeding \$400,000 to complete construction of one new multi-purpose fishing vessel ("Vessel"), more particularly described in Appendix 2 of this Schedule. The Band accepts this contribution as constituting part of the Commercial Fisheries Access.

- 2 (2) Before DFO pays the monies provided for in subsection 2(1), the Band shall provide DFO, for its approval, with a copy of the contract for the construction of the Vessel and satisfactory proof that the proposed costs do not exceed its market value.
- 2 (3) It is the sole responsibility of the Band:
- (a) to obtain independent technical, legal and other advice in relation to the construction of the Vessel;
  - (b) to ensure, upon receipt, that the Vessel meets the needs of the Band and is in good seaworthy condition and repair;
  - (c) to ensure that the Vessel is free and clear of all liens, financial obligations and other charges;
  - (d) to obtain independent technical, legal and other advice in order to complete the necessary certification and registration to the Band for the Vessel, without delay; and
  - (e) to effect and maintain whatever insurance on the Vessel that the Band considers necessary.
- 2 (4) Subject to subsection 2(2) and on receipt of notice from the Band concerning the choice of legal counsel to finalize the contract for the construction of the Vessel, DFO shall deliver in trust to the said legal counsel, within a reasonable time period, the amount of \$400,000.
- 2 (5) The legal counsel referred to in subsection 2(4) shall disburse the funds received in trust on behalf of the Band for the construction of the Vessel, subject to the following conditions':
- (a) monies for the construction of the Vessel will be advanced to the Band in accordance with the payment schedule set out in the building contract; and
  - (b) any amount provided by DFO in excess of the funds under clause (a) shall be returned to DFO forthwith.
- 2 (6) Monies relating to any incomplete transaction referred to in section 2 of this Schedule shall be returned to DFO without delay.
- 2 (7) It is the sole responsibility of the Band to conduct its own inspection or evaluation of the Vessel. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to the Vessel.
- 2 (8) At any time prior to the awarding of the building contract, and during construction, DFO reserves the right to conduct its own independent evaluation of the construction of the Vessel.
- 2 (9) When the Band takes delivery of the Vessel, it shall immediately notify DFO, in writing, of the date and place of delivery, and provide DFO with a copy of a report as to the condition of the vessel at the time of delivery.
- 2 (10) Within thirty days following receipt of the Vessel, the Band shall provide DFO with confirmation of the certification and registration referred to in clause 2(3)(d).

## **Contribution 2: Inshore Fishing Licences, Vessels and Gear**

- 3 (1) DFO agrees to facilitate the provision to the Band of inshore and midshore fishing licences, vessels and gear up to a cost to DFO of \$7,000,000. The Band accepts contribution 2 as constituting part of the Commercial Fisheries Access.
- 3 (2) The Band acknowledges that it will have to inspect the vessels and gear prior to their acquisitions (hereinafter referred to as the "Property").
- 3 (3) DFO reserves the right to conduct its own independent evaluation of the Property.
- 3 (4) DFO will use its best efforts to facilitate the transfer of the licences and Property to the Band.
- 3 (5) The Band agrees to accept the transfer of the Property, in the condition that it is and at the place where it is at the time of the transfer.
- 3 (6) DFO has no obligations to the Band with respect to the transfer of the Property or the failure of the Property to be transferred.
- 3 (7) It is the sole responsibility of the Band:
  - (a) to ensure that the Property meets its needs, is in good seaworthy condition and repair and contains no hazardous substances within the meaning of the *Canada Labour Code*;
  - (b) to ensure that the Property is free and clear of all liens, financial obligations and other charges;
  - (c) to obtain, complete and register, without delay, any required bill of sale, Carving and Marking Note, Certificate of Registry, and any other document needed to transfer ownership of the Property;
  - (d) to effect and maintain whatever insurance on the Property that it considers necessary;
  - (e) to obtain independent technical, legal and other advice in relation to the transfer of the Property;
  - (f) to pay for all costs associated with the transfer of the Property, including but not limited to all costs of registering the Property, making the Property seaworthy, upgrading the Property, maintaining and equipping the Property, having the Property inspected, obtaining the necessary certificates, removing the Property from the place where it is located at the date of transfer, and operating the Property;
- 3 (8) The Band is responsible for any damage, loss or charges arising out of the transfer of the Property, including but not limited to the transfer of the Property to the Band, the removal of the Property from the place where it is located at the date of transfer, and ownership and operation of the Property.
- 3 (9) When the Band takes delivery of the Property, it shall immediately notify DFO, in writing, of the date and place of delivery, and provide DFO with a copy of the surveyor's report as to the condition of the Property at the time of delivery.

### **Contribution 3: Equipment and Facilities**

4 (1) During the fiscal year, DFO shall pay to the Band as follows:

- (a) a contribution not exceeding \$351,000 for the construction of a bait storage facility as set out in Appendix 3 to this Schedule;
- (b) a contribution not exceeding \$2,430,000 for a feasibility study, business plan and construction of a fisheries laboratory as set out in Appendix 3 to this Schedule; and
- (c) a contribution not exceeding \$500,000 for three boats, a floating dock and a business plan for their use in the recreational fishery, as set out in Appendix 3 to this Schedule.
- (d) a contribution not exceeding \$175,000 for safety equipment and to upgrade gear, as set out in Appendix 3 to this Schedule.

The Band accepts contribution 3 as constituting part of the Commercial Fisheries Access.

4 (2) Before DFO pays the monies provided for in subsection 4(1), the Band shall provide DFO with the following documents:

- (a) a copy of the agreements of purchase and sale for the purchase of the items set out in paragraphs 4(1)(c) and (d); and,
- (b) a copy of the building contract for the construction of the bait storage facility and the fisheries laboratory as set out in paragraphs 4(1)(a) and (b), respectively;

and satisfactory proof that the proposed costs for the foregoing do not exceed their market value.

4 (3) It is the sole responsibility of the Band to conduct its own inspection or evaluation of the items described in paragraphs 4(1)(a), (b) and (d) of this Schedule. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to the items described in paragraphs 4(1)(a), (b) and (d) of this Schedule.

4 (4) It is the sole responsibility of the Band:

- (a) to ensure that the boats referred to in paragraph 4(1)(c) meet the needs of the Band and are in good seaworthy condition and repair;
- (b) to obtain, complete and register, without delay, any required bill of sale, Carving and Marking Note, Certificate of Registry, and any other document needed to transfer ownership of the boats referred to in paragraph 4(1)(c);
- (c) to effect and maintain whatever insurance on the items referred to in paragraph 4(1)(c) that it considers necessary;
- (d) to pay for all costs associated with the transfer of purchase of the items referred to in paragraph 4(1)(c) including, but not limited to, all costs of registering the items, upgrading the items, having them inspected, obtaining the necessary certificates,

removing them from the place where they are located at the date of transfer, and operating those items, as the case may be.

- 4 (5) DFO reserves the right to conduct its own independent evaluation of the items described in subsection 4(1) of this Schedule.
- 4 (6) Subject to subsection 4(2) and on receipt of notice from the Band concerning the choice of legal counsel to finalize the building contracts and conduct the purchase of the items described in subsection 4(1) of this Schedule, DFO shall deliver in trust to the said legal counsel, within a reasonable time period, the amount of \$3,456,000.
- 4 (7) The legal counsel referred to in subsection 4(6) shall disburse the funds received in trust on behalf of the Band for the items described in subsection 4(1), subject to the following conditions:
  - (a) monies for the construction of the bait storage facility described in paragraph 4(1)(a) will be advanced to the Band in accordance with the payment schedule set out in the building contract referred to in paragraph 4(2)(b); and
  - (b) monies for the construction of the fisheries laboratory described in paragraph 4(1)(b) will be advanced to the Band in accordance with the payment schedule set out in the building contract referred to in paragraph 4(2)(b);
  - (c) monies for the purchase of the items described in paragraphs 4(1)(c) and (d) will be advanced to the band in the amount and on the date of sale stipulated in the agreement of purchase and sale;
  - (d) monies for feasibility studies and business plans connected to the items described in subsection 4(1) will be advanced to the Band on demand; and
  - (e) any amount provided by DFO in excess of the funds under paragraphs (a), (b), (c) and (d) shall be returned to DFO forthwith.
- 4 (8) It is the responsibility of the Band to purchase the items described in subsection 4(1) free of all encumbrances and to obtain all the required documents to complete the transfer of ownership of the items.

#### **Contribution 4: Projects**

- 5 (1) During the fiscal year, DFO shall pay to the Band as follows:
  - (a) a contribution not exceeding \$2,940,000 for gear, equipment, training and spat production capability in support of an oyster production project as set in Appendix 4 to this Schedule;
  - (b) a contribution not exceeding \$780,000 for navigational training and Master IV fishing training, as set out in Appendix 4 to this Schedule ;
  - (c) a contribution not exceeding \$915,000 for co-management projects, as set out in Appendix 4 to this Schedule;

- (d) a contribution not exceeding \$55,800 for equipment and training in the gaspereau fishery, as set out in Appendix 4 to this Schedule;
- (e) a contribution not exceeding \$55,000 for the Environmental Master Plan, as set out in Appendix 4 to this Schedule.
- (f) a contribution not exceeding \$150,000 for the development of a Fisheries Strategy for the next 2 to 5 year period, as set out in Appendix 4 to this Schedule.

The Band accepts contribution 4 as constituting part of the Commercial Fisheries Access.

- 5 (2) Before DFO pays the monies provided for the items referred to in subsection 5(1), the Band shall provide DFO with copies of agreements of purchase and sale where appropriate for items described in subsection 5(1), copies of contracts for training, and satisfactory proof that the proposed costs for the foregoing do not exceed their market value.
- 5 (3) The Band will ensure that any authorizations required pursuant to subsection 35(2) of the **Fisheries Act** and any other authorizations required by law are obtained prior to the commencement of any habitat, enhancement or other activities, under this Agreement, and that those activities are conducted in accordance with those authorizations.

#### General Provisions

- 6 (1) The Band shall provide DFO, as soon as possible after the coming into force of this Schedule, with a report setting out:
  - (a) a projection of Allowable Costs for the fiscal year for contributions in subsections 2(1), 4(1) and 5(1) in the form described in Appendix 6; and
  - (b) a projected summary of the results.
- 6 (2) Following receipt of a cash flow projection referred to in subsection 6(1) and subject to subsections 12(2) and (3), at the beginning of the first month and monthly thereafter, DFO will provide an advance to the Band equal to the Allowable Costs for the month that the Band projected in the cash flow projection.
- 6(3) Following receipt of a supplementary report referred to in section 10, DFO may, in its discretion, increase the amount to be paid during the period covered by the revised cash flow projection contained in the supplementary report by:
  - (a) adjusting the amounts of the advances to be provided, pursuant to subsection 6(2), during the period; or
  - (b) paying an additional payment to the Band.
- 7 (1) Where a statement of balance referred to in subsection 12(4) indicates that the total of the reimbursement, advances and payments paid to the Band pursuant to this Schedule exceed Allowable Costs paid or payable by the Band during the period covered by the

statement of balance (the "Positive Balance"), DFO shall deduct the Positive Balance from any advance or advances, or payment or payments to be made by DFO to the Band pursuant to subsection 6 (2).

- 7 (2) In no event will the total of advances for contributions made under subsection 5(1) by DFO pursuant to subsection 6(2) exceed \$4,406,220.
- 7 (3) To carry out the activities described in Schedule B, the Band is the recipient and administrator of all contributions.
- 7 (4) The contributions and any interest earned by the Band shall be used exclusively to pay the Allowable Costs.
- 7 (5) DFO may, at its discretion, require the Band to provide it with detailed descriptions of the project or a part thereof, in a form that is acceptable to DFO. The detailed descriptions must include a description of the project that the Band will carry out and the Band's obligations in carrying out the project, in more detail than is provided in sections 2, 4 and 5 and in Appendices 2, 3 and 4.

#### Final Payment

- 8 Subject to section 12, following receipt and approval of the final report referred to in section 11, DFO shall pay the Band the amount, if any, by which the Band's total Allowable Costs as reported in the final report exceed all advances made by DFO under this Schedule.

#### Interim Reports

- 9 (1) After the coming into force of this Schedule, DFO will notify the Band of the dates by which the Band is to have completed and submitted the reports and other information referred to in subsection 9(2) and the period of time which the reports and other information are to cover.
- 9 (2) The Band will complete and submit to DFO for each period of time set out in the notice referred to in subsection 9(1), an interim report containing
  - (a) a report on the progress of the Band in carrying out the project during that period, itemized in relation to each of the activities of the project;
  - (b) a report on Allowable Costs paid or payable during that period, itemized in relation to each of the activities of the project;
  - (c) a report on Allowable Costs paid or payable during that period, itemized in relation to each type of Allowable Cost set out in Appendix 1 to this Schedule;
  - (d) a statement of balance of the last day in the period in the form as set out in Appendix 5 to this Schedule;

on or before dates referred to in subsection 9(1).



- 9 (3) The Band may, in conjunction with an interim report referred to in subsection 9(2), submit a revised cash flow projection in the form as set out in Appendix 6 to this Schedule, showing Allowable Costs the Band expects to incur during the remainder of the fiscal year.

#### Supplementary Reports

- 10 The Band may, at any time prior to the submission of the final report referred to in section 11, submit a supplementary report consisting of:
- (a) a statement of balance as of the date of the report in the form as set out in Appendix 5 to this Schedule;
  - (b) a report on the progress of the Band in carrying out the project to the date of the report, itemized in relation to each of the activities of the project;
  - (c) a report on Allowable Costs paid or payable to the date of the report, itemized in relation to each of the activities of the project;
  - (d) a report on Allowable Costs paid or payable to the date of the report, itemized in relation to each type of Allowable Cost set out in Appendix 1 to this Schedule;
  - (e) a revised cash flow projection in the form attached as set out in Appendix 6 to this Schedule.

#### Final Report

- 11 Within seventy-five (75) days following:
- (a) the date on which the Band incurs Allowable Costs in an amount equal to or exceeding the maximum amount of the contributions 1, 3 and 4, or
  - (b) completion of the project, or
  - (c) termination of this Schedule or the Agreement, or
  - (d) the end of the fiscal year, or
  - (e) abandonment of the project by the Band,
- whichever occurs first, the Band shall complete and submit a final report containing:
- (f) a progress report on the project itemized in relation to each of the activities of the project;
  - (g) a report on Allowable Costs paid or payable itemized in relation to each of the activities of the project
  - (h) a report on Allowable Costs paid or payable during that period, itemized in relation to each type of Allowable Cost set out in Appendix 1 to this Schedule;
  - (i) a statement of balance of the last day in the period in the form as set out in Appendix 5 to this Schedule; and
  - (j) an audited statement if required by this Agreement.

#### General Provisions

- 12 (1) In no event will the total of all advances and payments made by DFO pursuant to this Schedule exceed \$8,751,800.
- 12 (2) All payments made pursuant to this Schedule are subject to DFO's approving the Band's projected costs and actual expenditures as set out in the reports submitted pursuant to subsection 6(1) and sections 9, 10 and 11.
- 12 (3) Where the Band fails to provide:
- (a) a report referred to in subsection 6(1) and sections 9, 10 and 11,
  - (b) a detailed description of the project in accordance with subsection 7(5), or
  - (c) the statement of balance referred to in subsection 12(4),
  - (d) on request by DFO, evidence satisfactory to DFO that monies paid by DFO under this Schedule have been expended for Allowable Costs,
- in a form acceptable to DFO, or by the date the report or information is due, DFO may, at its discretion, withhold any payment to be made by DFO to the Band pending receipt by DFO from the Band of the relevant document or information in a form acceptable to DFO.
- 12 (4) DFO may, at any time, require the Band to provide it with a statement of balance in the form described in Appendix 5 or request evidence satisfactory to DFO that monies paid by DFO under this Schedule have been expended for Allowable Costs.
- 12 (5) Where the Band provides a report referred to in section 11, but this report does not, in DFO's opinion, contain the information required, DFO may, at its discretion, withhold any payment to be made to the Band pending receipt from the Band of the information required.
- 13 (1) The Band shall:
- (a) keep books, accounts, records and supporting documentation relating to all financial transactions pertaining to the contributions in accordance with accounting principles generally accepted in Canada;
  - (b) preserve the books, accounts, records and supporting documentation referred to in clause (a) together with reports and any other documents related to the project, for a period of two years following termination of this Schedule; and
  - (c) provide DFO, on request, with any of the documentation referred to in clause (a) for examination and audit by any person designated by DFO.
- 13 (2) Within seventy-five (75) days following:
- (a) the date on which the Band incurs Allowable Costs in an amount equal to or exceeding the amount of the contributions 1, 3 and 4, or
  - (b) completion of the project, or

- (c) termination of this Schedule or the Agreement, or
- (d) the end of the fiscal year, or
- (e) abandonment of the project by the Band

whichever occurs first, the Band shall repay to DFO any amount of contributions 1, 3 and 4 and any interest earned by the Band not disbursed for the payment of Allowable Costs.

- 13 (3) The Band shall refund to DFO, forthwith on written request from DFO, any monies that DFO advanced to it for which the Band has not provided satisfactory proof that these monies were spent in accordance with this Schedule.
- 13 (4) Any amount that the Band has an obligation to refund or reimburse under subsections 13(2) or 13(3) of this Schedule is a debt owing to Her Majesty the Queen in Right of Canada.
- 13 (5) The Band's obligations under subsections 13(1) to 13(4) of this Schedule remain in force after the termination of this Schedule and the Agreement.
- 13 (6) DFO shall not adjust the amounts of advances or make an additional payment pursuant to subsection 6(3) of this Schedule following receipt of the final report referred to in section 11 of this Schedule.
- 13 (7) Where any claim for payment, payment information or other communication or report related to payment is required to be given by the Band under this Schedule, it shall be in writing and delivered personally, by courier or registered mail, or by facsimile and, unless otherwise indicated, shall be addressed to DFO as follows:

Department of Fisheries and Oceans

Address: 176 Portland Street, Dartmouth, NS B2Y 4T3

Attention: Regional Director General, Maritimes Region

Telephone: 902-426-2581

Fax: 902-426-3470

- 13 (8) The Band, at its ~~own~~ expense, shall provide to DFO an audited statement in a form acceptable to DFO with respect to all financial transactions related to the contributions prepared by an accountant certified to practice in the Province of Nova Scotia and authorized to prepare such statements in that Province.
- 14 Where the project or any part of it, requires an environmental assessment under the Canadian Environmental Assessment Act, DFO shall fulfil its responsibilities under the Canadian Environmental Assessment Act before any advances or payments can be made in relation to that part of the project to which the environmental assessment relates. Should the project or any part of it change after the environmental assessment is completed, the Band will immediately provide DFO with a detailed description of the changed project. If this changed project description is consistent with the description set out in the Schedule and meets with DFO's approval and the changed project requires an

environmental assessment under the *Canadian Environmental Assessment Act*, DFO shall fulfil its responsibilities under the *Canadian Environmental Assessment Act* before any advances or payments can be made under this Schedule in relation to that part of the project to which assessment relates.

Coming into Force

- 15 This Schedule will come into force on the date of signature of this Agreement and, subject to Paragraph 11 of the Agreement, will terminate on March 31, 2001.

Appendix 1 to Schedule B

Description of Allowable Costs

Allowable costs means the following types of costs:

- (a) For contribution 1:
  - (i) cost of the construction of a vessel
  - (ii) professional fees, consultants' fees and other services other than litigation costs
- (b) For contributions 3 and 4, administrative costs comprised of
  - (i) salaries and benefits;
  - (ii) other labour costs;
  - (iii) supplies and materials costs; and
  - (iv) overhead, including printing and copying charges.
- (c) For contribution 3 and 4, operational costs comprised of:
  - (i) salaries and benefits;
  - (ii) other labour costs;
  - (iii) costs incurred in establishing and operating an office or offices;
  - (iv) costs incurred in constructing, establishing and maintaining other facilities;
  - (v) costs incurred in purchasing and renting supplies, materials and equipment needed to carry out the project, including the purchase, lease, repair and maintenance of stock assessment materials, equipment and supplies, vehicle and boat rentals and related transportation costs and crew safety gear;
  - (vi) travel, accommodation, meeting and related expenses; and
  - (vii) professional fees, consultants' fees and other services other than litigation costs.

Appendix 2 to Schedule B

**Contribution 1:** Description of the vessel to be constructed for which DFO is providing funds in order to complete its construction.

The vessel is a 55' multi-purpose fishing vessel (crab boat and dragger) built to the specifications of the Band (\$400,000).

### Appendix 3 to Schedule B

**Contribution 3:** Description of the assets for which funds are being provided by DFO in accordance with section 4:

1. Construction of a bait storage facility, a building 50' by 80' equipped with appropriate refrigeration and operating costs (\$351,000);
2. Feasibility study and business plan (\$130,000) and construction of a building, 160' by 60' with 15,500 sq. ft. of floor space, to house a marine exhibit to promote traditional and scientific education in the community, a laboratory for fisheries related scientific research and office space for fishery related activities (\$2,300,000);
3. Three fibreglass boats and a floating dock. This project will include the development of a business plan and include training of personnel (\$500,000)
4. Safety equipment and fishery gear upgrades. This will include the purchase of life jackets, floaters, suits, etc..., and equipment to repair lobster and crab traps, etc... (\$175,000)

#### Appendix 4 to Schedule B

**Contribution 4:** Activities carried out by the Band and approved by DFO will be in connection with the following:

**Project Description:** an oyster production project, navigation training, co-management projects, equipment and training in support of a gaspereau fishery, recreational fisheries projects and development of an Environmental Master Plan.

1. Gear, equipment training and spat production capability in support of 20 oyster leases The project will include training for twenty (20) fishers and include spat production, technical support, equipment and product marketing (\$2,940,000);
  - (a) Oyster production project in support of 20 oyster leases (\$2,940,000)
    - ✓ ■ Training for 20 oyster harvesters (\$179,220)
    - ✓ ■ Oyster harvesting equipment (\$1,320,780)
    - ✓ ■ Training for oyster industry and oyster lease management (\$140,000)
    - Spat production, technical support, equipment and product marketing assistance (\$1,300,000)
  - (b) Training (\$780,000)
    - navigational training at the NS School of Fisheries (\$330,000), general navigation training (\$150,000), training allowance in support of fishing Master IV training (\$300,000).
  - (c) Fisheries co-management (\$915,000).
    - Conduct a green crab market study. This study will include market research as well an examination of harvesting methods in support of market development.(\$125,000).
    - Undertake a groundfish trawl survey in the Bras D'Or Lakes. The project will consist of a trawl survey to document the distribution of groundfish and epifaunal benthic invertebrates in the Bras D'Or Lakes. A detailed biological sampling of cod will be included (\$265,000).
    - Conduct a plankton survey in the Bras D'Or Lakes This project consist of survey and plankton sample analysis (\$40,000).



- Oyster Bed rejuvenation project This project will consist of to oyster cultivation and the restocking and enhancement of traditional public oyster beds (\$140,000).
  - Conduct a cod tagging program in the Bras D'Or Lakes (\$75,000).
  - Conduct a Herring population study in the Bras D'Or Lakes. The project will consist of a study to describe a population marker for the Bras D'Or Lakes using computer images analysis and elemental fingerprinting of otoliths (\$70,000).
  - Conduct an Eel Enhancement Project including a feasibility study on eel culture This project will include the purchase of elvers and investigate and seek methods to increase growth weight and promote earlier maturity in Eels (\$200,000).
- (d) Equipment and training to support the development of a gaspereau fishery. The training will consist of a week course delivered by certified processors. Equipment will include a salting building, boat, motor and trailer, box net, salting vats, tote boxes and miscellaneous equipment (\$55,800).
- (e) The development of an Environmental Master Plan. This plan will be used to support the development of fisheries related tourism facilities at Goat Island. Funds will to be used to conduct surveys, develop a Landscape Conceptual plan, market assessment, financial projections and detailed operating plan (\$55,000).
- (f) The development of a Fishery Strategy for the next 2 to 5 year period (\$150,000).

Appendix 5 to Schedule B

Statement of balance

For the period from \_\_\_\_\_ to \_\_\_\_\_

Allowable costs paid or payable \$

**MINUS** \$

Contributions from DFO received to date \$

**BALANCE** \$

Appendix 6 to Schedule B

Cash flow projection

For the 2000-2001 Fiscal Year

<b>MONTH</b>	<b>\$</b>
April	
May	
June	
July	
August	
September	
October	
November	
December	
January	
February	
January	
February	
March	
<b>TOTAL</b>	


NOTE: The Band should include only the Allowable Costs that it will incur in the future and leave empty the spaces for the previous months.

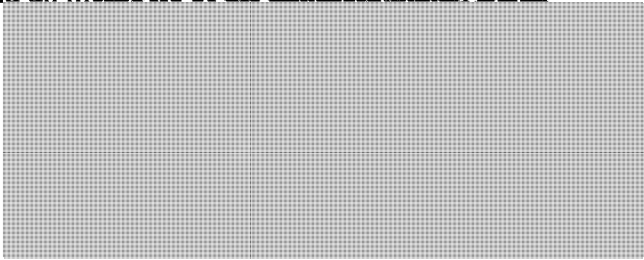
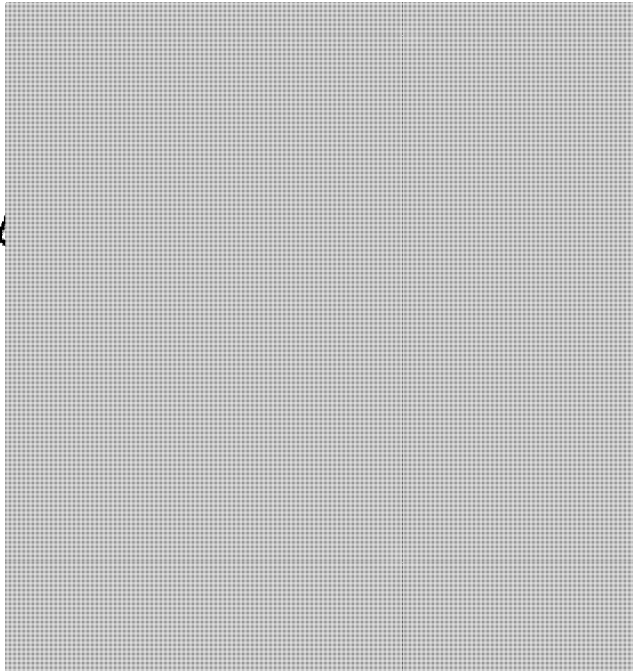
## BAND COUNCIL RESOLUTION

---

Pursuant to the consent of a majority of the Council of the Eskasoni Indian Band at a duly convened meeting of the Council of the Eskasoni Indian Band held on the JUNE day of 13, 2000 for the specific purpose of reviewing, discussing, and approving the Aboriginal Fisheries Strategy Fisheries Agreement and the Interim Fisheries Agreement with Her Majesty the Queen in Right of Canada. THE COUNCIL OF THE ESKASONI BAND RESOLVES AS FOLLOWS:

1. BE IT RESOLVED THAT the Council of the Eskasoni Indian Band approves the terms of the draft Fisheries Agreement dated JUNE 13, 2000.
2. BE IT RESOLVED THAT the Council of the Eskasoni Indian Band authorizes Chief Allison Bernard to execute the Aboriginal Fisheries Strategy Fisheries Agreement and the Interim Fisheries Agreement on behalf of the Council and all members of the Eskasoni Indian Band.

  
Chief



\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_

A quorum of the Eskasoni Indian Band Council consists of \_\_\_\_\_ Council Members.

*[Note: the above represents the essential elements required by DFO. The First Nation may choose to re-format, add recital clauses, etc., so long as the substance of the above remains unchanged.]*

**THIS INTERIM FISHERIES AGREEMENT AMENDMENT MADE**

**BETWEEN:**

**Her Majesty the Queen in Right of Canada as represented by the  
Minister of Fisheries and Oceans (hereinafter called "DFO");**

**OF THE FIRST PART**

**AND:**

**Eskasoni Indian Band, as represented by Chief Blair Francis  
(hereinafter called the "Band");**

**OF THE SECOND PART**

**WHEREAS** on or about the 13<sup>th</sup> day of June, 2000, the Parties entered into an Interim Fisheries Agreement, hereinafter called the "IFA";

**AND WHEREAS**, pursuant to sections 10 and 13 of the IFA, the Parties wish to amend the terms of the said IFA in the manner set out herein;

**NOW THEREFORE** the Parties agree as follows:

1. The Parties amend the terms of the IFA by replacing subsection 6(1)(a) of the IFA with the following:

"6(1)(a) to complete the construction of two (2) vessels, as set out in Appendix 2 to Schedule B;"

2. The Parties amend the terms of the IFA by adding the following term to section 1 of Schedule B:

" "Contribution 5" means funding provided by DFO in accordance with section 5.1 of this Schedule;"

and by replacing the definition of "Contributions" at section 1 of Schedule B with the following:

" Contributions" means the total of Contribution 1, Contribution 2, Contribution 3, Contribution 4, and Contribution 5."

3. The Parties amend the terms of the IFA by replacing subsection 4(1)(c) of Schedule B with the following:

"4(1)(c) a contribution not exceeding \$200,000 for three boats, a floating dock, and a business plan for their use in the recreational fishery, as set out in Appendix 3 to this Schedule."

4. The Parties amend the terms of the IFA by replacing subsection 5(1)(a) of Schedule B with the following:

"5(1)(a) a contribution not exceeding \$2,424,000 for gear, equipment, training and spat production capability in support of an oyster production project as set out in Appendix 4 to this Schedule;"

5. The Parties amend the terms of the IFA by adding subsection 5.1 to Schedule B as follows:

"Contribution 5: Multi-Purpose Fishing Vessel

5.1(1) DFO agrees to provide the Band, during the fiscal year, with a contribution not exceeding \$816,000 for the construction of one new multi-purpose fishing vessel ("Vessel"), more particularly described in Appendix 2 of this Schedule. The Band accepts this contribution as constituting part of the Commercial Fisheries Access.

5.1(2) Before DFO pays the monies provided for in subsection 5.1(1), the Band shall provide DFO, for its approval, with a copy of the contract for the construction of the Vessel and satisfactory proof that the proposed costs do not exceed their fair market value.

5.1(3) It is the sole responsibility of the Band:

- (a) to obtain independent technical, legal and other advice in relation to the construction of the Vessel;
- (b) to ensure, upon receipt, that the Vessel meets the needs of the Band and is in good seaworthy condition and repair;
- (c) to ensure that the Vessel is free and clear of all liens, financial obligations and other charges;
- (d) to obtain independent technical, legal and other advice in order to complete the necessary certification and registration to the Band for the Vessel, without delay; and
- (e) to effect and maintain whatever insurance on the Vessel that the Band considers necessary.

- 5.1(4) Subject to subsection 5.1(2) and on receipt of notice from the Band concerning the choice of legal counsel to finalize the contract for the construction of the Vessel, DFO shall deliver in trust to the said legal counsel, within a reasonable time period, the amount of \$816,000.
  - 5.1(5) The legal counsel referred to in subsection 5.1(4) shall disburse the funds received in trust on behalf of the Band for the construction of the Vessel, subject to the following conditions:
    - (a) monies for the construction of the Vessel will be advanced to the Band in accordance with the payment schedule set out in the building contract; and
    - (b) any amount provided by DFO in excess of the funds under clause (a) shall be returned to DFO forthwith.
  - 5.1(6) Monies relating to any incomplete transaction referred to in section 5.1 of this Schedule shall be returned to DFO without delay.
  - 5.1(7) It is the sole responsibility of the Band to conduct its own inspection or evaluation of the Vessel. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to the Vessel.
  - 5.1(8) At any time prior to the awarding of the building contract, and during construction, DFO reserves the right to conduct its own independent evaluation of the construction of the Vessel.
  - 5.1(9) When the Band takes delivery of the vessel, it shall immediately notify DFO, in writing, of the date and place of delivery; and provide DFO with a copy of a report as to the condition of the Vessel at the time of delivery.
  - 5.1(10) Within thirty days following receipt of the Vessel, the Band shall provide DFO with confirmation of the certification and registration referred to in clause 5.1(3)(d)."
6. The Parties amend the terms of the IFA by replacing subsection 6(1)(a) of Schedule B with the following:
- "6(1)(a) a projection of Allowable Costs for the fiscal year for contributions in subsections 2(1), 4(1), 5(1), and 5.1(1) in the form described in Appendix 6;"

7. The Parties amend the terms of the IFA by replacing subsection 7(2) of Schedule B with the following:

“7(2) In no event will the total of all advances for contributions made under subsection 5(1) by DFO pursuant to subsection 6(2) exceed \$3,941,820.”

8. The Parties amend the terms of the IFA by replacing subsection 12(1) of Schedule B with the following:

“12(1) In no event will the total of all advances and payments made by DFO pursuant to this Schedule exceed \$15,751,800.”

9. The Parties amend the terms of the IFA by replacing paragraph (a) of Appendix 1 to Schedule B with the following:

“(a) For Contribution 1 and Contribution 5.”

10. The Parties amend the terms of the IFA by adding the following to Appendix 2 of Schedule B:

“Contribution 5: Description of the vessel to be constructed for which DFO is providing funds in order to complete its construction.

The Vessel is a 55' multi-purpose vessel (for various species, such as snow crab, shrimp, and groundfish) built to the specifications of the Band (\$816,000).”

11. The Parties amend the terms of the IFA by replacing paragraph 3 of Appendix 3 to Schedule B with the following:

“3. Three fibreglass boats and a floating dock. This project will include the development of a business plan and include training of personnel (\$200,000).”

12. The Parties amend the terms of the IFA by replacing paragraph 1(a) of Appendix 4 to Schedule B with the following:

“1. Gear, equipment, training and spat production capability in support of 20 oyster leases. The project will include training for twenty (20) fishers and will include spat production, technical support, equipment and product marketing (\$2,424,000);

(a) Oyster production project in support of 20 oyster leases (\$2,424,000).



- 5 -

- Training for 20 oyster harvesters (\$179,220);
  - Oyster harvesting equipment (\$1,054,780);
  - Training for oyster industry and oyster lease management (\$140,000);
  - Spat production, technical support, equipment and product marketing assistance (\$1,050,000).
13. Notwithstanding any other provision of this Amendment, in the event that the Band is able to obtain funding for the Vessel from any other funding agency or department, prior to the expiration of the IFA, the amount by which such third party funding reduces Contribution #5 from DFO for construction of the Vessel may, at the election of the Eskasoni Band and with the approval of DFO, which approval shall not be unreasonably withheld, be applied to any of the other contributions under the IFA.
14. The Band warrants that, with effect from November 17/2000, Chief Blair Francis is authorized to execute this Amending Agreement on behalf of the Council and the members of the Band, as set out in the Band Council Resolution annexed hereto.
15. The IFA, as amended by this Amending Agreement, shall continue in full force and effect for the remainder of the term thereof.

IN WITNESS WHEREOF the Parties have executed this Amending Agreement under the hands of their duly-authorized representatives this 15th day of Feb., 2001.

K. M. Stewart  
Witness

[Signature]  
Her Majesty the Queen in Right of Canada as Represented by the Minister of Fisheries and Oceans by James Alexander MacKenzie, Chief Federal Representative, duly authorized to act on behalf of the Minister

[Signature]  
Eskasoni Band, as represented by its Chief Blair Francis, duly authorized to act for the purposes of this Amending Agreement on behalf of the Council and members of the Eskasoni Band.

# CONTRIBUTION AGREEMENT AMENDMENT NO. 1

This Contribution Agreement amendment is made in duplicate

**BETWEEN:** HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Fisheries and Oceans ("hereinafter called the Minister")

OF THE FIRST PART

**AND:** ESKASONI INDIAN BAND, as represented by Chief Allison Bernard ("hereinafter called the Band").

OF THE SECOND PART

## PURPOSE

The purpose of this amendment is to decrease the size floor space in the "Contribution". Replace as follows:

### APPENDIX 3 TO SCHEDULE B -2.

From:	To:
2. Feasibility study and business plan (\$130,000) and construction of a building, 160' by 60' with 15,500 sq. ft. of floor space, to house a marine exhibit to promote traditional and scientific education in the community, a laboratory for fisheries related scientific research and office space for fishery related activities.	2. Feasibility study and business plan (\$130,000) and construction of a building, <del>160' by 60'</del> with 12,000 sq. ft. of floor space, to house a marine exhibit to promote traditional and scientific education in the community, a laboratory for fisheries related scientific research and office space for fishery related activities.

All other articles remain the same.

IN WITNESS WHEREOF this Amendment has been executed by Her Majesty through her duly authorized officers and the Eskasoni Indian Band, as represented by its Chief, Allison Bernard, duly authorized to act for the purposes of the Agreement on behalf of the Council and members of the Eskasoni Band.

Witness

Date

For The Minister of Fisheries & Oceans

Date

For the Band

Date

THIS INTERIM FISHERIES AGREEMENT MADE this 7<sup>th</sup> day of April, 2000

BETWEEN: Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans (hereinafter called "DFO");

OF THE FIRST PART

AND: Saint Mary's Band, as represented by Chief Arthur Bear (hereinafter called the "Band");

OF THE SECOND PART

WHEREAS DFO is committed to providing interim access to fisheries resources for the Band;

AND WHEREAS the Parties are committed to a relationship based on mutual respect and understanding and accept that ~~this~~ Agreement is the initial stage of a longer term process;

AND WHEREAS the Parties acknowledge the importance of conservation and protection of the fisheries resources;

NOW THEREFORE the Parties agree as follows:

Purpose

- 1 (1) In light of the Supreme Court of Canada's decision in *R. v. Marshall* and other case law and considerations, the purpose of this Agreement is to facilitate access to fisheries resources by the Band as an interim measure, pending further discussions on other, longer term harvesting arrangements.
- 1 (2) Under this Agreement, DFO shall provide the Band with access to fisheries and assistance in capacity building.

Definitions

- 2 (1) In this Agreement,  
"Agreement" means ~~this~~ interim fisheries agreement and the schedules attached hereto;  
"Band" means the Saint Mary's Indian Band, and band has the meaning given in subsection 2(1) of the *Indian Act*;  
"capacity building" means those activities described in Schedule B of *this* Agreement;

"Commercial Fisheries Access" means the fishing described in Schedule A;

"Council of the Band" means Council of the Band as defined in subsection 2(1) of the *Indian Act*;

"Minister" means the Minister of Fisheries and Oceans;

"RDG" means the Regional Director General, Maritimes Region, Department of Fisheries and Oceans.

#### Legal Interpretations

- 3 (1) This Agreement is intended, during the period it is in force and effect, to be binding upon the Parties in respect of the matters dealt with in this Agreement, and is without prejudice to the positions of the Parties with respect to Aboriginal or treaty rights.
- 3 (2) This Agreement shall not serve to define Aboriginal or treaty rights, nor shall it be interpreted as evidence of the nature or extent of such rights. This Agreement is made without prejudice to the positions of the Parties with respect to Aboriginal or treaty rights, or to the positions of either Party in any future negotiations.
- 3 (3) This Agreement is not intended and shall not be construed or interpreted to be an agreement or a treaty within the meaning of section 35 of the *Constitution Act*, 1982.
- 3 (4) This Agreement is not intended to, and shall not be construed or interpreted to, affect any Aboriginal or treaty rights of any other Aboriginal group.

#### Commencement and Duration

- 4 (1) Subject to Paragraph 11, this Agreement shall come into effect on the date of signature of the Parties, and shall terminate on March 31, 2001.
- 4 (2) This Agreement supersedes and replaces all negotiations, arrangements, agreements, letters of intent or positions, whether oral or in writing, between the Parties hereto or their representatives with respect to all matters addressed in this Agreement.
- 4 (3) Sub-paragraph 4(2) does not apply to the Aboriginal Fisheries Strategy Fisheries Agreement between the Parties executed on the same date as this Agreement.

#### Fisheries Access

- 5 (1) DFO shall provide the Band with access to fisheries resources for the purpose of a commercial fishery through a communal fishing licence in respect of the species, stocks and quantities, and upon the terms and conditions specified in Schedule A.

- 5 (2) The Band agrees that during the term of this Agreement, fisheries access for the Band is limited to the access described in Schedules A.

#### Capacity Building

- 6 (1) In an effort to assist the Band in capacity building in the fishery, DFO agrees to contribute funding, in accordance with Schedule B for:
- (a) two tuna fishing vessels with gear and related equipment;
  - (b) partial payment for one sea urchin fishing vessel;
  - (c) Aquaculture licence with storage facility and sea urchin gear;
  - (d) tuna gear for two vessels;
  - (e) one half-ton truck;
  - (f) four dry suits and related diving gear;
  - (g) one breathing air system, including compressor, cascade system, regulated fill panel, hose assembly, tank inspection course and storage facility to house compressor system.
  - (h) equipment to satisfy Coast Guard Safety regulations, including two 20-person life rafts, canopy, seating, 50 life jackets, life buoy, life buoy light, five fire extinguishers, 12-volt 18" double horn and two first aid kits;
  - (i) two herring skiffs, seine trailer and a herring weir site;
  - (j) 100 lobster traps and related fishing equipment; and
  - (k) base for commercial operations in Chamcook Harbour

- 6 (2) Individuals who are not Band members and have been designated in writing by the Band pursuant to section 3 of Schedule A may assist the Band in training its members to carry out the fishing activities provided for in this Agreement.

- 6 (3) The Band assumes all responsibility for any costs and liabilities associated with the training described in sub-paragraph 6(2).

#### Designation of Fishers and Distribution of Benefits

- 7 The Band is responsible for designating individuals in accordance with Schedule A to conduct fishing for the benefit of the Band.

#### Ratification and Public Accountability

- 8 (1) The Band warrants that the Council of the Band discussed and approved the terms of this Agreement as evidenced by the Band Council Resolution dated April 7, 2000, a copy of which is annexed to this Agreement.
- 8 (2) The Band warrants that Chief Arthur Bear is authorized to execute this Agreement on behalf of the Council and the members of the Band, as set out in the Band Council Resolution annexed hereto.

- 8 (3) The Minister has authorized James Alexander MacKenzie, Chief Federal Representative, to execute this Agreement on behalf of Her Majesty the Queen in Right of Canada.
- 8 (4) The Council of the Band shall inform its members of the contents of this Agreement and shall provide an annual report to its members outlining the financial and economic benefits. On request, the Council will provide a copy of this report to DFO.

#### Schedules

- 9 Schedules A and B attached hereto form part of this Agreement.

#### Further Discussions

- 10 DFO and the Band undertake to discuss from time to time at the request of either Party on any matters arising from or related to this Agreement, including amendments to this Agreement and to work together in good faith to find a mutually acceptable solution to any issue that may arise.

#### Termination

- 11 This Agreement, or any individual Schedule to the Agreement, may be terminated by either Party on six (6) months' notice in writing to the other Party.

#### Notice and Representatives

- 12 (1) Where any written notice or other communication is required pursuant to this Agreement, it shall be delivered personally, by courier, registered mail or facsimile transmission, addressed to the Party as follows:

**DFO:** Maritimes Region  
Address: 176 Portland Street, P.O.Box 1035, Dartmouth, NS B2Y 1T3  
Attention: Regional Director General  
Telephone: (902) 426-2581  
Facsimile: (902) 426-3479

**Saint Mary's Indian Band**  
Address: 35 Dedham Street, Fredericton, NB E3A 2V2  
Attention: Chief and Council  
Telephone: (506) 458-9511  
Facsimile: (506) 452-2763

- 12 (2) A notice or other communication shall be deemed to have been received when the postal receipt is acknowledged by the other Party if sent by registered mail, and the following business day if sent by courier, facsimile transmission or delivered in person.

Amendment or Waiver

- 13 No amendment to this Agreement nor any waiver of any of its terms and conditions shall **have** any force or effect unless it is made in **writing** and signed by both Parties.

No Agency

- 13 Neither Party shall at any time represent itself as an **agcnt** of the other Party.

No Assignment

- 15 The Band shall not assign **this Agreement** or any part thereof.

House of Commons

- 16 No member of the **House** of Commons shall be admitted to any share or **part** of this **Agreement**, or to any benefit arising **therefrom**.

Public Servants

- 17 A present or former public servant or public office holder who is not in compliance with the applicable provisions of the ***Conflict of Interest and Post-Employment Code for Public Office Holders*** or the ***Conflict of Interest and Post-Employment Code for the Public Service*** shall not derive a direct benefit from this Agreement.

General

- 18 **Subject** to the authority of the Minister of Fisheries and **Oceans**, DFO **and** the Band shall work together in good **faith** to implement this Agreement.
- 19 Any information to be **provided** by or to **DFO** or **shared** by or with DFO pursuant to this Agreement shall be subject to access to information and privacy legislation.
- 20 The Band shall indemnify and save **harmless** Her Majesty the Queen in Right of Canada, Her Ministers, **officers**, employees and agents **from** and against all **claims**, actions, causes of action, losses, damages, expenses and costs of whatsoever nature and kind arising out of or resulting directly or indirectly **from** any acts or omissions of the Band, its officers, members, employees, **agents**, contractors or **anyone** for **whom** the Band is responsible in **law** as a result of or in relation to this Agreement.
- 21 The obligations of Band under **Paragraph** 20 shall survive **termination** or expiration **of** this Agreement.

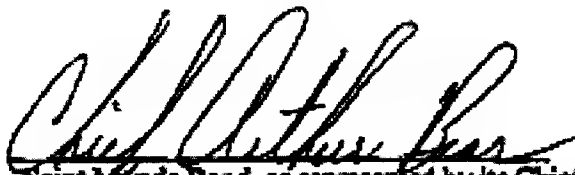
IN WITNESS WHEREOF the Parties have executed this Agreement under the hands of their duly-authorized representatives this 7<sup>th</sup> day of April, 2000.



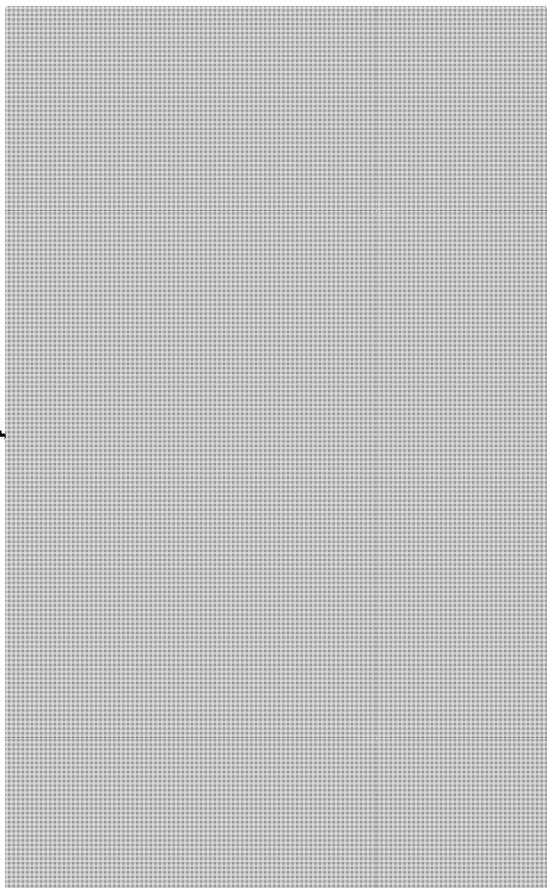
Witness



Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans by James Alexander MacKenzie, Chief Federal Representative, duly authorized to act on behalf of the Minister



Saint Mary's Band, as represented by its Chief, Arthur Bear, duly authorized to act for the purposes of this Agreement on behalf of the Council and members of the Saint Mary's Band





Schedule A

Commercial Fisheries Access

Definitions

1 In this Schedule,

"Commercial Licence" means a communal fishing licence specified in section 2 of this Schedule;

"Commercial Designation Card" means a personal and non-transferable designation card issued in accordance with this Schedule;

"Schedule" means this Schedule.

Licensing

2 (1) Pursuant to the *Fisheries Act*, DFO will issue to the Band the following communal fishing licences:

- (a) Species of fish: **Herring**  
Number of licences: 1 shut-off  
Area:  
Gear type and quantity: Hemng weir  
Containing the Terms and Conditions of a commercial fishing licence for hemng shut-off
- (b) Species of fish: Tuna  
Number of licences: 3  
Area: Gulf NB  
Gear type and quantity: Rod and reel  
Containing the Terms and Conditions of a commercial fishing licence for tuna
- (c) Species of fish: Sea Urchin  
Number of licences: 2  
Area: LFA 36  
Gear type and quantity: Diving  
Containing the Terms and Conditions of a commercial fishing licence for sea urchin
- (d) Species of fish: Quahaug  
Number of licences: 1  
Area: to be determined 36  
Gear type and quantity: to be determined DRAG  
Containing the Terms and Conditions of a commercial fishing licence for quahaug

(e) Species of fish: Sea Cucumber  
Number of licences: 1  
Area: ~~to be determined~~ L F A 3 L  
Gear type and quantity: ~~to be determined~~ D A A 9  
Containing the Terms and Conditions of a commercial fishing licence for sea cucumber

(f) Species of fish: Gaspereau  
Number of licences: 1  
Area: to be determined  
Gear type and quantity: to be determined  
Containing the Terms and Conditions of a commercial fishing licence for gaspereau

- 2 (2) The Band will comply with the DFO Fisheries Management Plans for the commercial fisheries mentioned in subsection 2(1) and with the *Fisheries Act* and regulations made thereunder.

Designation to Fish under the Band's Commercial Licence

- 3 (1) The Band will designate members of the Band to fish pursuant to the Commercial Licence. Pursuant to Paragraph 6 of this Agreement, where training is involved, the Band may designate one individual per vessel who is not a member of the Band to assist in training its members in the fishery. Each individual designated by the Band shall be issued a Commercial Designation Card. Each card shall be personal and non-transferable and will bear a unique card number and the name of the designated individual. The card will specify where an individual has been designated to assist in training.

- 3 (2) Before fishing under the Commercial Licence, the Band shall:

- (a) provide to DFO a list of the names of all designated individuals, together with their Commercial Designation Card number and, where a vessel is to be used for fishing, the name and registration number of the vessel;
- (b) inform each designated individual of the provisions set out in this Schedule; and
- (c) incorporate the terms and conditions of the Band Commercial Licence into the terms and conditions of the Commercial Designation Card provided to each designated individual.

- 3 (3) The Band may amend the list set out in subsection 3(2) provided it sends the amended list to DFO before newly designated individuals commence fishing and before any newly designated vessel is used.

- 3 (4) The Band shall **inform** each designated individual of any amendments to this Schedule and to **the** Band Commercial Licence.
- 3 (5) Designated individuals will **carry** their Commercial Designation Cards at all times while engaged in fishing or any other **activity** referred to in this Schedule, including the harvesting, **transporting** and **landing** of fish, and will present **their** Designation Card to a DFO fishery officer or a DFO fishery guardian or an Aboriginal **Fisheries** Guardian, upon request.

#### **Costs**

- 4 Except for those costs identified in Schedule C, the Band is responsible for all costs associated with **commercial fishing** activities. For greater certainty and where applicable, such costs **include dockside** monitoring and observer coverage, as well as any requirements under any joint management plans that may be in place in the commercial fisheries to which the Band has access.

#### **Coming into Force**

- 5 This Schedule will come into force as of April 1, 2000 and, subject to Paragraph I 1 of the Agreement, will **terminate** on March 31, 2001.

## Schedule B

### Capacity Building

#### Definitions

1. In **this** Schedule:

"Allowable Costs" means the costs and expenses approved by DFO that are incurred by and are paid or payable by the Band **during** the **fiscal** year in carrying out the project and that are described in Appendix 1 of **this** Schedule, but does not include the **Harmonized Sales Tax** (HST) paid on the costs and expenses for which the Band may claim reimbursement or exemption.

"contribution 1" means funding provided by DFO in accordance with section 2 of this Schedule;

"contribution 2" means finding provided by DFO in accordance with section 3 of this Schedule;

"contribution 3" means **funding** provided by DFO in accordance with section 4 of this schedule

"contributions" means the total of contribution 1 and contribution 2 and contribution 3.

"**fiscal year**" means the period April 1, 2000 to March 31, 2001 inclusive;

"project" means **the purchases** described in Appendices 2 and 3 of **this** Schedule;

"Schedule" means **this** Schedule including Appendices 1, 2, 3, 4, and 5.

#### Contributions

##### **Contribution 1: Construction of Vessels**

- 2 (1) During the **fiscal** year DFO shall pay to the **Band** a **contribution not** exceeding \$358,030, of which \$270,000 is for **the** construction of two tuna fishing vessels, and \$81,180 is for **the** construction of one **sea urchin vessel, more particularly described** in Appendix 2 to this Schedule. The Band accepts contribution 1 as constituting part of the Commercial Fisheries Access.
- 2 (2) Before DFO pays the monies provided for in subsection 2(1), the Band shall provide **DFO**, for its approval, with a copy of the contract for the construction of **the** tuna fishing and sea urchin vessels, and satisfactory proof that the proposed costs do not exceed their market **value**.

- 2 (3) Subject to subsection 2(2) and on receipt of notice from the Band concerning the choice of legal counsel in regard to the construction of the tuna fishing and sea urchin vessels described in subsection 2(1) of this Schedule, DFO shall deliver in trust to the said legal counsel, within a reasonable time period, the amount of \$358,030.
- 2 (4) It is the sole responsibility of the Band:
- (a) to obtain independent technical, legal and other advice in relation to the construction of the tuna fishing and sea urchin vessels;
  - (b) to ensure, upon receipt, that the tuna fishing vessels and the sea urchin vessel meet the Band's needs and are in good seaworthy condition and repair;
  - (c) to ensure that the tuna fishing and sea urchin vessels are free and clear of all encumbrances;
  - (d) to obtain independent technical, legal and other advice in order to complete the necessary certification and registration to the Band of the tuna fishing and sea urchin vessels, without delay; and
  - (e) to effect and maintain whatever insurance on the tuna fishing and sea urchin vessels that the Band considers necessary.
- 2 (5) The legal counsel referred to in subsection 2(3) shall disburse the funds received in trust on behalf of the Band for the construction of the tuna fishing and sea urchin vessels, subject to the following conditions:
- (a) monies for the construction of the tuna fishing and sea urchin vessels will be advanced to the Band in accordance with the payment schedule set out in the building contracts; and
  - (b) any amount provided by DFO in excess of the funds under clause (a) shall be returned to DFO forthwith.
- 2 (6) Monies relating to any incomplete transaction referred to in section 2 of this Schedule shall be returned to DFO without delay.
- 2 (7) It is the sole responsibility of the Band to conduct its own inspection or evaluation of the tuna fishing and sea urchin vessels. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to these vessels.
- 2 (8) At any time prior to the awarding of the building contracts, and during construction, DFO reserves the right to conduct its own independent evaluation of the construction of the tuna fishing and sea urchin vessels.
- 2 (9) When the Band takes delivery of the tuna fishing and sea urchin vessels, it shall immediately notify DFO, in writing, of the date and place of delivery, and provide DFO with a copy of a report as to the condition of the tuna fishing and sea urchin vessels at the time of delivery.

- 2 (1 0) Within thirty days following receipt of the tuna fishing vessels and sea urchin vessels, the Band shall provide DFO with confirmation of the certification and registration referred to in clause 2(4)(d).

**Contribution 2: Aquaculture licence with storage facility and sea urchin gear and Base for Commercial Operations**

- 3 (1) During the fiscal year, DFO shall pay to the Band as follows:

- (a) a contribution not exceeding \$171,800 for the purchase of one sea urchin aquaculture licence, a sea urchin storage facility and sea urchin gear, described in Appendix 2 of this Schedule; and
- (b) a contribution not exceeding \$169,000 for a base for commercial operations located in the Village of Chamcook Harbour Area, to be acquired in the name of the Band, described in Appendix 2 of this Schedule.

The Band accepts contribution 2 as constituting part of the Commercial Fisheries Access.

- 3 (2) Before DFO pays the monies provided for in subsection 3(1), the Band shall provide DFO with a copy of the agreements of purchase and sale for the purchase of the items described in subsection 3(1), and satisfactory proof that the proposed costs for the foregoing do not exceed their market value.
- 3 (3) It is the sole responsibility of the Band to conduct its own inspection or evaluation of the items described in subsection 3(1) of this Schedule. Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to the items described in subsection 3(1) of this Schedule.
- 3 (4) DFO reserves the right to conduct its own independent evaluation of the items described in subsection 3(1) of this Schedule.
- 3 (5) Subject to subsection 3(2) and on receipt of notice from the Band concerning the choice of legal counsel to conduct the purchase of the items described in subsection 3(1) of this Schedule, DFO shall deliver in trust to the said legal counsel, within a reasonable time period, the amount of \$340,800.
- 3 (6) The legal counsel referred to in subsection 3(5) shall disburse the funds subject to the following conditions:
- (a) legal counsel shall ensure that the items described in subsection 3(1)(a) of this Schedule are free and clear of all encumbrances and provide the sum of \$171,800, less any monies paid for the discharge of all encumbrances, to the vendor on the closing date for the purchase of the storage facility, as set out in the agreement of purchase and sale referred to in subsection 3(2); and
  - (b) legal counsel shall ensure that the items described in subsection 3(1)(b) of this Schedule are free and clear of all encumbrances and provide the sum of \$169,000 to the vendor on

- the closing date for the purchase of the base for commercial operations, as set out in the agreement of purchase and sale referred to in subsection 3(2); and
- (c) any amount provided by DFO in excess of the funds under clause (a), shall be returned to DFO forthwith.

3 (7) Within thirty days of the purchase each of the storage facility and base for commercial operations referred to in subsection 3(1), the Band will provide to DFO a copy of the Registered duplicate of the deeds for the storage facility and base for commercial operations.

3 (8) It is the responsibility of the Band to purchase the items described in subsection 3(1) free of all encumbrances and to obtain all the required documents to complete the transfer of ownership of the items.

### Contribution 3: Equipment

4 (1) DFO agrees to provide the Band, during the fiscal year, with a contribution not exceeding \$299,206 for the following purchases:

- (i) \$20,500 for tuna gear for two tuna fishing vessels described in Appendix 2 and as set out in clause (i) of Appendix 3;
- (ii) \$35,805 for one half-ton truck; as set out in clause (ii) of Appendix 3;
- (iii) \$24,000 for four dry suits and related diving gear as set out in clause (iii) of Appendix 3;
- (iv) \$41,611 for one breathing air system as set out in clause (iv) of Appendix 3;
- (v) \$63,000 for equipment to satisfy Coast Guard Safety regulations as set out in clause (v) of Appendix 3;
- (vi) \$84,440 for a herring skiff, seine trailer and a hemming weir site as set out in clause (vi) of Appendix 3;
- (vii) \$15,000 for 100 lobster traps and related fishing equipment as set out in clause (vii) of Appendix 3; and.
- (viii) \$5,000 for professional fees associated with the administration of this Agreement, as set out in clause (ix) of Appendix 3.

4 (2) On receipt of notice from the Band concerning the choice of legal counsel to conduct the purchase of the items described in subsection 4(1) of this Schedule, DFO shall deliver in trust to the said legal counsel, within a reasonable time period, the amount of \$299,206.

4 (3) The legal counsel referred to in subsection 4(2) shall disburse the funds received from DFO in trust for the purchases referred to in subsection 4(1) subject to the following conditions:

- (a) legal counsel shall ensure that all items described in subsection 4(1) are free and clear of all encumbrances, where applicable, prior to disbursing any monies to the vendors or the Band for the purchase of the said items;
- (b) any amount provided by DFO in excess of the funds under clause (a), shall be returned to DFO forthwith.

- 4 (4) Within thirty days of the date on which monies are remitted in trust to legal counsel referred to in subsection 4(2), the Band will provide bills of sales for the purchase of items referred to in subsection 4(1); in default of which such monies shall be returned to DFO. DFO, at its discretion, **may** grant an extension with respect to the thirty-day time period.
- 4 (5) It is the sole responsibility of the Band:
- (a) to ensure that ~~the herring~~ skiff referred to in clause 4(1)(f) meets its needs and is in good seaworthy condition and repair;
  - (b) to obtain, complete and register, without delay, any required bill of sale, Carving and Marking Note, Certificate of Registry, and any other document needed to transfer ownership of the ~~herring~~ skiff;
  - (c) ~~to~~ effect and maintain whatever insurance on the items referred to in subsection 4(1) that it considers necessary;
  - (d) to pay for all costs associated with the transfer of purchase of the items referred to in subsection 4(1) including, but not limited to, all costs of registering the items, upgrading the items, having them inspected, obtaining the necessary certificates, removing them from the place where they are located at the date of transfer, and operating those items, as the case may be.
- 4 (6) It is the sole responsibility of the Band to conduct its own inspection or evaluation of the items referred to in subsection 4(1). Furthermore, it is the sole responsibility of the Band to obtain the necessary insurance coverage with respect to these items.

#### General Provisions

- 5 (1) The Band shall provide **DFO**, as soon as possible after the coming into force of this Schedule, ~~with~~ a report setting out:
- (a) a projection of Allowable Costs for the fiscal year for the contributions in sections 2, 3 and 4 in the form described in Appendix 5; and
  - (b) a projected **summary** of the results.
- 5 (2) Following receipt of the cash flow projection referred to in subsection 5(1) and subject to subsections 10(2) and (3), at the beginning of each three month period DFO will provide an advance to the Band equal to the Allowable Costs for that three month period that the Band projected in the cash flow projection.
- 6 (1) Where a statement of balance referred to in subsection 10(4) indicates that the total of the reimbursement, advances and payments paid to the Band pursuant to this Schedule exceed Allowable Costs paid or payable by the Band during the period covered by the statement of balance (the "Positive Balance"), DFO shall deduct the Positive Balance from any advance or advances, or payment or payments to be made by DFO to the Band pursuant to subsection 5(2).



- 6 (2) To carry out the activities described in Schedule B, the Band is the recipient and administrator of all contributions.
- 6 (3) The contributions and any interest earned by the Band shall be used exclusively to pay the Allowable Costs.
- 6 (4) DFO may, at its discretion, require the Band to provide it with detailed descriptions of the projects or a part thereof, in a form that is acceptable to DFO. The detailed descriptions must include a description of the projects that the Band will carry out and the Band's obligations in carrying out the projects, in more detail than is provided in section 2, 3 4 and Appendices 2 and 3.

#### Interim Reports

- 7 (1) After the coming into force of this Schedule, DFO will notify the Band of the dates by which the Band is to have completed and submitted the reports and other information referred to in subsection 7(2) and the period of time which the reports and other information are to cover.
- 7 (2) The Band will complete and submit to DFO for each period of time set out in the notice referred to in subsection 7(1), an interim report containing
  - (a) a report on the progress of the Band in carrying out the project during that period, itemized in relation to each of the activities of the project;
  - (b) a report on Allowable Costs paid or payable during that period, itemized in relation to each of the activities of the project;
  - (c) a report on Allowable Costs paid or payable during that period, itemized in relation to each type of Allowable Cost set out in Appendix 1 to this Schedule;
  - (d) a statement of balance of the last day in the period in the form as set out in Appendix 4 to this Schedule;on or before dates referred to in subsection 7(1).
- 7 (3) The Band may, in conjunction with an interim report referred to in subsection 7(2), submit a revised cash flow projection in the form as set out in Appendix 5 to this Schedule, showing Allowable Costs the Band expects to incur during the remainder of the fiscal year.

### Supplementary Reports

- 8 The Band may, at any time prior to the submission of the final report referred to in section 9, submit a supplementary report consisting of:
- (a) a statement of balance as of the date of the report in the form as set out in Appendix 4 to this Schedule;
  - (b) a report on the progress of the Band in carrying out the project to the date of the report, itemized in relation to each of the activities of the project;
  - (c) a report on Allowable Costs paid or payable to the date of the report, itemized in relation to each of the activities of the project;
  - (d) a report on Allowable Costs paid or payable to the date of the report, itemized in relation to each type of Allowable Cost set out in Appendix I to this Schedule;
  - (e) a revised cash flow projection in the form attached as set out in Appendix 5 to this Schedule.

### Final Report

- 9 Within seventy-five (75) days following:
- (a) the date on which the Band incurs Allowable Costs in an amount equal to or exceeding the maximum amount of contributions 1.2 and 3. or
  - (b) completion of the projects, or
  - (c) termination of this Schedule or the Agreement, or
  - (d) the end of the fiscal year, or
  - (e) abandonment of the projects by the Band,
- whichever occurs first, the Band shall complete and submit a final report containing:
- (f) a progress report on the projects itemized in relation to each of the activities of the projects; and
  - (g) a report on Allowable Costs paid or payable itemized in relation to each of the activities of the project;
  - (h) a report on Allowable Costs paid or payable during that period, itemized in relation to each type of Allowable Cost set out in Appendix I to this Schedule;
  - (i) a statement of balance of the last day in the period in the form as set out in Appendix 4 to this Schedule; and
  - (j) an audited statement if required by this Agreement.

### General Provisions

- 10 (1) In no event will the total of all payments made by DFO pursuant to this Schedule exceed \$991,186.

10 (2) All payments made pursuant to this Schedule are subject to DFO's approving the Band's projected costs and actual expenditures as set out in the reports submitted pursuant to sections 5, 7, 8 and 9.

10 (3) Where the Band fails to provide:

- (a) a report referred to in sections 5, 8, 9 and 10,
- (b) a detailed description of the project in accordance with subsection 6(4), or
- (c) the statement of balance referred to in subsection 10(4),
- (d) on request by DFO, evidence satisfactory to DFO that monies paid by DFO under this Schedule have been expended for Allowable Costs,

in a form acceptable to DFO, or by the date the report or information is due, DFO may, at its discretion, withhold any payment to be made by DFO to the Band pending receipt by DFO from the Band of the relevant document or information in a form acceptable to DFO.

10 (4) DFO may, at any time, require the Band to provide it with a statement of balance in the form described in Appendix 4 or request evidence satisfactory to DFO that monies paid by DFO under this Schedule have been expended for Allowable Costs.

10 (5) Where the Band provides a report referred to in section 9, but this report does not, in DFO's opinion, contain the information required, DFO may, at its discretion, withhold any payment to be made to the Band pending receipt from the Band of the information required.

11 (1) The Band shall:

- (a) keep books, accounts, records and supporting documentation relating to all financial transactions pertaining to the contributions in accordance with accounting principles generally accepted in Canada;
- (b) preserve the books, accounts, records and supporting documentation referred to in clause (a) together with reports and any other documents related to the project, for a period of two years following termination of this Schedule; and
- (c) provide DFO, on request, with any of the documentation referred to in clause (a) for examination and audit by any person designated by DFO.

11 (2) Within seventy-five (75) days following:

- (a) the date on which the Band incurs Allowable Costs in an amount equal to or exceeding the full amount of the contributions, or
- (b) completion of the projects, or
- (c) termination of this Schedule or the Agreement, or
- (d) the end of the fiscal year, or
- (e) abandonment of the projects by the Band

whichever occurs first, the Band shall repay to DFO any amount of contributions 1, 2, and 3 and any interest earned by the Band not disbursed for the payment of Allowable Costs.

- 11 (3) The Band shall refund to DFO, forthwith on written request from DFO, any monies that DFO advanced to it for which the Band has not provided satisfactory proof that these monies were spent in accordance with this Schedule.
- 11 (4) Any amount that the Band has an obligation to refund or reimburse under subsections 11(2) or 11(3) of this Schedule is a debt owing to Her Majesty the Queen in Right of Canada.
- 11 (5) The Band's obligations under subsections 11(1) to 11(4) of this Schedule remain in force after the termination of this Schedule and the Agreement.
- 11 (6) DFO shall not make an additional payment pursuant to section 3 of this Schedule following receipt of the final report referred to in section 9 of this Schedule.
- 11 (7) Where any claim for payment, payment information or other communication or report related to payment is required to be given by the Band under this Schedule, it shall be in writing and delivered personally, by courier or registered mail, or by facsimile and, unless otherwise indicated, shall be addressed to DFO as follows:

Maritimes Region

Address: 176 Portland Street, P.O.Box 1035, Dartmouth, NS B2Y 1T3  
Attention: Regional Director General  
Telephone: (902) 426-2581  
Facsimile: (902) 426-3479

- 11 (8) The Band, at its own expense, shall provide to DFO an audited statement in a form acceptable to DFO with respect to all financial transactions related to the contributions prepared by an accountant certified to practice in the Province of New Brunswick and authorized to prepare such statements in that Province.
- 12 Where the project or any part of it, requires an environmental assessment under the *Canadian Environmental Assessment Act*, DFO shall fulfil its responsibilities under the *Canadian Environmental Assessment Act* before any advances or payments can be made in relation to that part of the project to which the environmental assessment relates. Should the project or any part of it change after the environmental assessment is completed, the Band will immediately provide DFO with a detailed description of the changed project. If this changed project description is consistent with the description set out in the Schedule and meets with DFO's approval and the changed project requires an environmental assessment under the *Canadian Environmental Assessment Act*, DFO shall fulfil its responsibilities under the *Canadian Environmental Assessment Act* before any advances or payments can be made under this Schedule in relation to that part of the project to which assessment relates.

Coming into Force

- 13 This Schedule will come into force as of April 1, 2000 and, subject to Paragraph 11 of the Agreement, will terminate on March 31, 2001.

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## Appendix 1 to Schedule C

### Description of Allowable Costs

Allowable costs means the following types of costs:

- (a) For contribution 1:
  - (i) Two tuna fishing vessels; and,
  - (ii) partial payment for the construction of one sea urchin vessel.
- (b) For contribution 2:
  - (i) Sea urchin aquaculture licence;
  - (ii) Storage facility for sea urchin aquaculture gear and equipment;
  - (iii) Footing for building;
  - (iv) Sea urchin gear; and,
  - (v) Base for commercial operations in the Village of Chamcook Harbour
- (c) For contribution 3:
  - (i) tuna gear for two vessels, including pressure washer and engine and controls;
  - (ii) one half-ton truck;
  - (iii) four dry suits and related diving gear;
  - (iv) one breathing air system, including compressor, cascade system, regulated fill panel, hose assembly, tank inspection course and storage facility to house compressor system.
  - (v) equipment to satisfy Coast Guard Safety regulations, including two 20-person life rafts, canopy, seating, 50 life jackets, life buoy, life buoy light, five fire extinguishers, 12-volt 18" double horn and two first aid kits, and one computer;
  - (vi) two hemmg skiffs, seine trailer and a hemmg weir site; and,
  - (vii) 100 lobster traps and related fishing equipment - i.e. ropes, buoys;
- (d) For the contributions, administrative costs comprised of:
  - (i) professional fees, consultants' fees and other services other than litigation costs.

Appendix 2 to Schedule C

**Detailed description of Contributions 1 and 2**

- (a) Two thirty-one foot Rayliner Trophy tuna vessels @ \$138,425 each (fully rigged, radar, G.P.S., Depth Finder, Trailer), built to specifications of the Band. Maximum of \$276,850 for both vessels.
- (b) Partial payment one sea urchin vessel built to specifications of the Band and costing up to a maximum of \$81,180. The Band is committed to providing \$160,000 towards the cost of this vessel.
- (c) One sea urchin aquaculture licence, storage facility for sea urchin gear and equipment, footing for building and sea urchin gear (\$171,800).
- (d) Base for the Band's commercial fishing operations in the Village of Chamcook Harbour, to be used to headquarter commercial fishing operations, and also to be used as a business office, storage facility, repair center, etc... (\$169,000).

### Appendix 3 to Schedule C

#### Detailed Description of Contribution 3

- (i) Tuna gear for two vessels (\$20,500)

Gear associated with tuna fishing for the two vessels that are being constructed as described in Appendix 2

- (ii) One half-ton truck (\$38,805)

To be used to transport equipment, etc., to Bocabec Bay from Saint Mary's First Nation.

- (iii) Four dry suits and related diving gear (\$24,000)

Suits and gear to be used in the sea urchin fishery (\$6,000 each).

- (iv) One breathing air system (\$41,611)

System includes compressor, cascade system, regulated fill panel, hose assembly, tank inspection course and a mall building to house the compressor system

- (v) Equipment to satisfy Coast Guard safety regulations (\$63,000)

Equipment includes two 20-person life rafts, canopy, seating, 50 life jackets (\$76 each), life buoy, life haoy light, five fire extinguishers, 12-volt 18" double horn and two first aid kits, and one computer.

- (vi) Two herring skiffs, seine trailer and a herring weir site (\$84,440)

For use in the herring fishery

- (vii) 100 lobster traps and related fishing equipment (\$15,000)

Related equipment includes ropes, buoys, trap trailer, paint and miscellaneous items associated with the lobster traps.

- (viii) \$5,000 For administration of this Agreement.

To be used for the administration of this Agreement, including professional fees other than litigation costs.



Annendix 4 to Schedule C

Statement of balance

For the period from \_\_\_\_\_ to \_\_\_\_\_

Allowable costs paid or payable \$

**MINUS** \$

Contributions from DFO received to date \$

**BALANCE** \$

Appendix 5 to Schedule C

Cash flow projection

For the 2000-2001 Fiscal Year

MONTH	\$
April	
May	
June	
July	
August	
September	
October	
November	
December	
January	
February	
January	
February	
March	
TOTAL	\$991,186

NOTE: The Band should include only the Allowable Costs that it will incur in the future and leave empty the spaces for the previous months.